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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 267.

W. H. CRUMP, APPELLANT,

vs.

H. K. THURBER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

FILED SEPTEMBER 16, 1882.

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1 Proceedings of the Circuit court of the United States for the District of Kentucky, at a regular term begun and held at the city of Louisville, on Monday, February 20th, 1882.

Present: The Hon. John W. Barr, judge of the United States for the district of Kentucky.

Order—Filing, Trans', &c., from Cl'k Ch'y Ct.

W. H. CRUMP, Complainant,

vs.

JAMES WILSON, THE SOUTHERN DAIRY COMPANY, AND H K. THURBER, Defendants.

Be it remembered that, at the October Term, 1881, to wit, on Tuesday, November 1st, 1881, came the defendant, H. K. Thurber, by Barret & Brown, his counsel, and produced and filed in open court the transcript of the record of the cause from the Louisville chancery court, and of the bond and order transferring this cause into this court for trial, to which the complainant, W.
2 H. Crump, by Emmet Field, his counsel, objected. Thereupon the defendant, H. K. Thurber, by his counsel, filed his answer herein, and the complainant, by his counsel, filed his replication to said answer.

Thereupon, the defendant, H. K. Thurber, by his counsel, filed his cross-bill of complaint against the defendant, The Southern Dairy Company, and thereupon came the defendant, The Southern Dairy Company, by Barret & Brown, its counsel, and filed its answer to said cross-bill, and the defendant, H. K. Thurber, by his counsel, filed his replication to said answer.

The record of the Louisiana chancery court, above referred to, is as follows:

COMMONWEALTH OF KENTUCKY, *Louisville Chancery Court:*

Pleas before the Hon. I. W. Edwards, chancellor of the Louisville chancery court, held at the court-house, in the city of Louisville, on the 11th day of October, 1881.

3 *Parties.*

W. H. CRUMP, Plaintiff,

against

JAMES WILSON and the SOUTHERN DAIRY COMPANY OF LOUISVILLE, Defendants.

Be it remembered that, on the 26th day of November, 1880, the plaintiff filed in the clerk's office of the court aforesaid his petition, which is in words and figures as follows, to wit:

Petition in Equity.

Louisville Chancery Court.

W. H. CRUMP, Plaintiff,

vs.

JAMES WILSON and the SOUTHERN DAIRY COMPANY, of Louisville, Defendants.

The plaintiff, W. H. Crump, says: That on or about the —— day of April, 1879, he and the defendant, James Wilson, entered into a verbal contract, by which the plaintiff undertook and agreed to assist the said defendant in selling the right to manufacture in the States of Kentucky and Indiana animal fats for the purpose of food,
4 in the form of butter and other products, the manufacture and preparation of olemargerine of sterine of oils, and all products of the same or of animal fats, and the preparation of articles in which said products or any of them are used, under a patent controlled by the said defendant.

Plaintiff says that by the terms of his said contract, the said defendant was to receive the sum of twelve thousand dollars for the right to manufacture under said patent in the State of Kentucky, and eight thousand dollars for the right to manufacture under said patent in the State of Indiana, and that all he might receive for either State above the amount for which the right to manufacture in that State was sold was to be divided equally between the said Wilson and himself.

Plaintiff says that he had been engaged for more than a year in the manufacture of olemargerine in the city of Cincinnati
5 under the said patent, and was familiar with the process by which it was made, and with the machinery used in said process. He says that as soon as the contract was made he went to work to interest men of capital in this city in the manufacture of olemargerine under said patent, with the view of disposing of the right to manufacture in accordance with his contract with said Wilson.

He says he advised the said Wilson from time to time of the progress he was making, and when it became apparent that the right to manufacture under said patent in Kentucky could be disposed of here, the said Wilson came to this city, and the right to manufacture under said patent in this State was disposed of by the formation of corporation organized under the incorporation law of this State, which corporation is styled in the articles of incorporation the Southern Dairy Company of Louisville, and that is the
6 name of said corporation.

He says the right to manufacture olemargarine and the other products before mentioned under said patent was sold to the Southern Dairy Company of Louisville, by the said corporation issuing $100,000 of stock in said corporation, in shares of $100 each, of which $50,000 or five hundred shares was taken by the incorporators other than said Wilson, and the same amount was to have been issued to said Wilson, but before the stock was issued to him he sold

one hundred shares of it at the price of fifty cents on the dollar, or for the gross sum of $5,000.00, and received the money therefor. Then $40,000 worth of said stock was issued to said Wilson, and by the articles of incorporation the stock so issued to him was to be forever free from any charge or assessment whatever. A certified copy of the articles of incorporation of the Southern Dairy Company of Louisville is here filed as part hereof, marked Exhibit A.

7 Plaintiff says the right to manufacture olemargerine and the other products aforesaid in the State of Indiana under said patent was sold to the said Southern Dairy Company of Louisville on the —— day of ———, 1879, by the said company amending its articles of incorporation and issuing to said Wilson $100,000 worth of stock therein, or one thousand shares of $100 each, which stock, by the terms of said amended articles, was to be forever free from any charge or assessment for any purpose. The said Wilson transferred five hundred shares of the stock last mentioned, or $50,000, to the members of the said company, and the other five hundred shares he retained as the price at which the right to use said patent in the State of Indiana was sold to said company. A copy of the said amended articles is here filed as part hereof, marked Exhibit B.

8 Plaintiff says the stock of said corporation is transferable only on the books of the company. He says that the defendant Wilson was one of the incorporators of the Southern Dairy Company of Louisville. He says the stock in said company issued to the other incorporators was taken by them at the price of fifty cents on the dollar, or $50.00 for each and every share thereof; and the one hundred shares of said stock sold by said Wilson as aforesaid was sold by him at that price, and he received the money therefor.

He says the other incorporators paid for the five hundred shares of stock purchased by them, for the right to use said patent in Kentucky as aforesaid, by paying fifty cents on the dollar thereof to the company as a working capital.

He says that at the times said stock was issued to said Wilson, in payment of the right to manufacture under said patent as aforesaid in the States of Kentucky and Indiana, the same was worth the sum of fifty cents on the dollar, and it is now worth that sum. He says

9 the said Wilson has received greatly more than the sum of $12,000 in value for the right to manufacture under said patent in the State of Kentucky, and he has received greatly more than $8,000 in value for the right to manufacture thereunder in the State of Indiana.

Plaintiff says that in accordance with his contract to assist the said Wilson to sell the right to manufacture under said patent, and all other information necessary to an intelligent understanding of the process, these he exhibited to most of the gentlemen who subsequently organized the Southern Dairy Company of Louisville, and to others; and by his practical knowledge of the process of manufacturing under said patent, and the cost and demand of the product made thereby, enabled them to estimate the profits to be realized therefrom, and after the said corporation was organized he super-

intended the construction of its factory in this city, and did
10 all in his power to give it a successful start; but notwithstanding the contract between the said Wilson and himself, that they were to share equally in the value realized, after deducting $12,000 as the price of the right to the State of Kentucky, and $8,000 as the price of the right to the State of Indiana as aforesaid, the said Wilson has failed and refused, and still fails and refuses, to give him any part of the said stock, and to give him any part of the sum for which he has sold such parts of said stock as he has disposed of, although plaintiff has often demanded his part of the same; and the said Wilson has fraudulently converted all of the said stock and all of said money to his own use.

Plaintiff files herewith as part hereof two letters written him by the said Wilson, one of which bears date Cincinnati, July 20th, 1879, and the other St. Louis, November 27th, 1879. He also files
11 as part hereof, two telegrams sent him by said Wilson, one from Cincinnati, July 28th, 1879, and the other from St. Louis, November 6th, 1879. Said exhibits are marked C, D, E, and F, respectively.

Plaintiff says the defendant the Southern Dairy Company of Louisville, is a corporation as aforesaid, duly organized under the incorporation law of this State, and as such can sue and be sued, contract and be contracted with.

He says John G. Barrett is its president and chief officer, and the principal place of business thereof is in this city.

He says that a large amount of the stock issued to the defendant Wilson as aforesaid, still stands upon the books of said corporation in the name of said Wilson, and it is held by him. He says that under his contract with said Wilson he is entitled to and is the owner of one-half of the stock which said Wilson received for the right
12 to use said patent in the States of Kentucky and Indiana as aforesaid, and that one-half thereof, after deducting the said $20,000 worth, as the amount Wilson was to receive before plaintiff's interest in the proceeds commenced, is $30,000 worth, or three hundred shares.

The said James Wilson is a non-resident of this State, and is a resident of the State and city of New York, and his postoffice address is New York City.

Wherefore, plaintiff prays that he be adjudged to be the owner of three hundred shares of the said stock. He further prays that the defendant, the Southern Dairy Company of Louisville, be ordered and compelled to cancel the stock now standing upon its books in the name of said Wilson to that number and extent, and that the said Company be ordered and compelled to issue to plaintiff certificates for the said number of shares of stock in said company, the same to be forever free from any charge or assessment by
13 the company, or if the said Wilson has not retained as much of said stock as belonged to plaintiff, he prays judgment against him for a sufficient sum to cover the deficiency.

He further prays judgment for his cost expended herein, and for all other proper relief.

EMMET FIELD, *For Plaintiff.*

W. H. Crump, the plaintiff herein, says he believes the statements of the foregoing petition are true.

W. H. CRUMP.

Subscribed and sworn to before me, by W. H. Crump, this 24th day of November, 1880.

EMMET FIELD,
N. P. J. C., Ky.

Warning Order.

COMMONWEALTH OF KENTUCKY, *Louisville Chancery Court,* } *sct:*

The non-resident defendant, James Wilson, is hereby warned and ordered to appear and answer the foregoing petition within sixty days from this date.

14 It is further ordered that H. R. Phillips be, and he is, appointed to — said James Wilson of the nature and pendency of this action.

November 26th, 1880.

JNO. H. WELLER, *Clerk.*
By JNO. T. SWEENEY, *D. C.*

Summons on Petition.

And on said petition there issued a summons, which is in words and figures as follows, to wit:

The Commonwealth of Kentucky to the marshal of the Louisville chancery court, Greeting:

We command you to summon The Southern Dairy Company, of Louisville, to answer a petition exhibited against them in our Louisville chancery court, by W. H. Crump, 35,614, and warn them that upon failure so to do for twenty days after service hereof, if in Jefferson county, or for thirty days if elsewhere in the State, judgment may be rendered by default, or answer compelled or proof taken at petitioner's option; and make due return hereof within sixty days from the date hereof.

15 Witness, John H. Weller, clerk of our said court, at the court-house in Louisville, the 26th day of November, 1880.

JOHN H. WELLER, *Clerk.*
By JOHN T. SWEENY, *D. C.*

And on said summons the marshal made the following return, to wit:

Marshal's Return on Summons.

Came to hand November 26th, 1880, at 11.40 a. m. Executed on the Southern Dairy Company of Louisville, Dec'r 3, 1880, by delivering a copy of this summons to John G. Barret, president thereof.

W. H. BAILEY, *M. L. C. C.*
By A. W. DAVIS, *D. M.*

And at a court held for the court aforesaid on the 10th day of December, 1880.

Order Filing Exh'b'ts A, B, C, D, E, & F.

Came the plaintiff by Field, counsel, and filed Exhibits "A," "B," "C," "D," "E," and "F," referred to in petition herein.

The exhibit marked "A," and referred to in the forgoing order, is in words and figures as follows, to wit:

16 EX'B'T "A."

Article of Incorp'n.

These articles of incorporation, entered into between James Wilson, John S. Brannin, A. O. Brannin, John G. Barret, George T. Wood, and John D. Taggart, witness—

That the said parties do hereby form an incorporated company under and in conformity with the provision of chapter 56 of the general statutes of the State of Kentucky, and for the purpose of perfecting such incorporation do covenant and agree to and with each other as hereinafter set forth, and do adopt the following articles of incorporation:

Article 1st.

This corporation shall be known and styled at the Southern Dairy Company of Louisville.

Article 2nd.

The place of business of said company and its chief office shall be in the city of Louisville.

Article 3rd.

17 The general nature of the business of said corporation shall be the treatment of animal fats for purposes of food in the form of butter, and other products; the manufacture and preparation of olemargerine of stearine of oils, and of all products of the same, or of animal fats, and the preparation of articles in which said products, or any of them, may be used, and in the selling and delivery of all such.

Article 4.

The authorized capital stock of said corporation shall be and is the sum of one hundred thousand ($100,000) dollars, paid up and to be paid as follows: The said capital stock shall be divided into one thousand shares of the par value of one hundred dollars each. Of said stock four hundred (400) shares, aggregating a par value of forty thousand ($40,000) dollars, are declared to belong to the subscriber, James Wilson. And it is expressly declared and understood that he has fully paid for the same by the assignment and

transfer and conveyance unto said corporation of certain pat-
18 ent rights, franchises, licenses, and privileges connected with and valuable for the purposes of the corporation and its business, the said transfer and assignment being made by the procurement of said Wilson directly from the United States Dairy Company to said corporation, instead of to said Wilson, and by him to said corporation; and the said four hundred shares, and every one of them, are expressly declared to be free from any and all call, assessments, and contribution whatever, of any kind, or for any purpose whatever; and the residue of the capital stock of the corporation, being six hundred shares of the aggregate par value of sixty thousand ($60,000) dollars, is declared to belong to the other subscribers hereto, as follows, to wit:

John S. Brannin owns one hundred shares; A. O. Brannin owns one hundred shares; John G. Barret owns two hundred shares; George T. Wood owns one hundred shares; John D. Taggart owns one hundred shares, for which they or their assigns are to
19 pay the sum of five thousand ($5,000) dollars for each one hundred shares by them severally subscribed and owned, as aforesaid, making an aggregate of thirty thousand dollars ($30,000) for the whole of said six hundred shares; and such payment is to be by them severally made, in such sums and at such times as may be called for by the board of directors of the corporation. It is expressly stipulated and declared that no greater amount than the sum of five thousand [dollars] ($5,000) shall be due or assessed or called for on or on account of any one hundred shares subscribed and owned as last aforesaid, nor any greater proportion on any number of such shares; and whenever the said shares have actually paid up the sum of fifty per cent. of the par value of the same—that is, $5,000 on the one hundred shares—or in that proportion, then said stock shall, for all purposes be held and treated as fully paid
20 up, and not under any pretense or demand of any kind held liable to any further call, assessment, or contribution, or the holder thereof liable to pay any sum whatever over and above fifty per centum of the par value of such stock by him held, the true intent and meaning being that on payment of fifty per centum of the par value shall operate as a payment in full; and the said payments, as made and when made, are to constitute a fund for renting, purchasing, or building necessary premises, and for purchasing machinery, apparatus, and material, and for paying the necessary expenses of the corporation, and for paying to James Wilson, one of the subscribers, the sum of five thousand ($5,000) dollars, a debt due him, and for constituting a working capital.

Article 5.

The stock of the corporation shall be assignable upon the books of the corporation under such regulations as shall be prescribed by the by-laws.

21 Article 6th.

The stockholders shall adopt a body of by-laws, which may be amended from time to time, as therein prescribed.

Article 7th.

The time of the commencement of the said corporation shall be the 3d day of June, 1879, and it shall exist for thirty years.

Article 8th.

The affairs of the corporation shall be conducted by a board of six directors. The present subscribers shall constitute the first board of directors, and shall continue as such until their successors are elected and qualified. The board of directors shall hereafter be chosen on the second Tuesday in May in each year, by a vote of the stockholders. The board of directors shall choose one of their number as a president, and shall elect a secretary and treasurer, who may, if they choose, be one of their number, and they may
22 require bond from such officer. And the office of secretary and treasurer may be filled, if the directors see fit, by one person.

Article 9th.

The highest amount of indebtedness or liability to which the said corporation may be subjected, or which it may incur, is hereby fixed at the sum of ten thousand ($10,000) dollars.

Article 10th.

The private property of the stockholders shall be exempt from all liability for the debts of said corporation.

In witness whereof, the said subscribers and corporators have hereto set their hands and seals, at Louisville, Kentucky, this 3 day of June, 1879.

JAMES WILSON. [SEAL.]
JNO. S. BRANNIN. [SEAL.]
A. O. BRANNIN. [SEAL.]
J. G. BARRET. [SEAL.]
GEO. T. WOOD. [SEAL.]
JOHN T. TAGGART. [SEAL.]

I, William E. Loran, clerk of the county court of Jefferson
23 county, in the State of Kentucky, do certify that on this day the foregoing articles of incorporation was produced to me in my office, and acknowledged and delivered by James Wilson, Jno. S. Brannin, A. O. Brannin, J. G. Barret, Geo. T. Wood, and John D. Taggart, parties thereto, to be their act and deed, and that I have recorded it and this certificate in my said office.

Witness my hand, this 5th day of June, 1879.

WM. E. LORAN, *Clk.*

A copy.
Att:

WM. E. LORAN, *Clk.*
By JNO. E. LORAN, *D. C.*

The Exhibit marked "B," being corporation notice, is in words and figure as follows, to wit:

EX'B'T "B."

Corporation Notice.

Notice is hereby given that the articles of incorporation of the Southern Dairy Company of Louisville are amended by the
24 unanimous vote of all the stockholders, as follows:

1. The capital stock of the corporation shall be, and is, increased by the sum of $100,000, and the total capital stock shall be $200,000 instead of $100,000, as heretofore.

2. The whole amount of the $100,000 of additional and increased capital stock, viz, $100,000, is set apart and to be issued to James Wilson and his assigns, as fully paid up and wholly unassessable stock, free from any other or further call in consideration of license under patents to the exclusive right, use, and manufacture within the State of Indiana, except the counties of Lake and Porter, as signed by Hippolyte Nergo to the United States Dairy Company, and by said company assigned to this corporation through the procurement and purchase of said Wilson.

3. All the original articles of incorporation subject only to those modifications are reaffirmed and adopted.

25 JOHN D. TAGGART.
JAMES WILSON.
JOHN E. NORRIS.
GEORGE BIRCH.
GEORGE T. WOOD.
J. G. BARRET.
OSCAR FENLEY.
H. C. RODES.
E. H. OWINGS.

I, W. E. Loran, clerk of the county court of Jefferson county, in the State of Kentucky, do certify that on this day the foregoing articles of incorporation was produced to me in my office, and acknowledged ond delivered by John D. Taggart, James Wilson, John E. Norris, and George Birch, parties thereto, to be their act and deed.

Witness my hand, this 24th day of July, 1879.

WM. E. LORAN, *Clk.*

I, Wm. E. Loran, clerk of the county court of Jefferson county, in the State of Kentucky, do certify that on this day the foregoing article of incorporation was again produced to me in my office,
26 and acknowledged and delivered by Oscar Fenley, H. C. Rodes, and E. N. Owings, parties thereto, to be their act and deed.

Witness my hand this 31st day of July, 1879.

WM. E. LORAN, *Clk.*

I, Wm. E. Loran, clerk of the county court of Jefferson county, in the State of Kentucky, do certify that on this day the foregoing article of incorporation was again produced to me in my office, and further and fully acknowledged and delivered by J. G. Barret and George T. Wood, parties thereto, to be their act and deed, and that I have recorded it, this and the foregoing certificates, in my said office.

Witness my hand this 7th day of August, 1879.

WM. E. LORAN, *Clk.*

A copy. Att.: WM. E. LORAN, *Clk.*
By JNO. C. LORAN, *D. C.*

The exhibit marked "C" being a letter from James Wil-
27 son to W. H. Crump, is in words and figures as follows, to wit:

EXHIBIT "C."

Letter from Wilson to Crump.

GRAND HOTEL, GILMORE & SONS,
CINCINNATI, *July 25th*, 1879.

W. H. CRUMP, Esq.:

DEAR SIR: I had your note before me duly—strange to say the stearine was sold yesterday afternoon to Geat, a soap man. I requested Mr. Bailey to advise you, which I presume he has done. I also had your dispatch about Kraiger, which I showed to his son, who did not seem to mind it much; he said that I could, or did not, go down on account of the expense. I hope the old man is better. A sample of several things went down to-day. If duplicates are to be made in Louisville, please see that they are not botched, but made properly. You know the object in view, it implies success as speedily as possible. Keep me fully advised of what goes on, and the
28 progress of machinery. There is more demand here for butter than a week ago among city dealers, also from Illinois. We had a letter to-day from a man who says he can sell, or will want, about six thousand pounds per week shortly. Butter will be high, I think, from several causes; I trust so, for the sake of our new company in Louisville. I wish it to be a complete success, so that our Louisville friends will not be disappointed.

Most truly, JAMES WILSON.

The exhibit marked "D," being a letter from James Wilson to W. H. Crump, is in words and figures as follows, to wit:

EXHIBIT "D." A LETTER.

LINDELL HOTEL, GRISWOLD & SCUDDER, PROPRIETORS,
ST. LOUIS, *Nov. 27th*, 1879.

W. H. CRUMP, Esq.:

DEAR SIR: I have your letter this morning, and it reaches me utterly broken down with work; up almost every night till

29 one o'clock, looking after fat. I also received your first letter. I had hoped to have been in Louisville before this. I am going to Chicago for a few days, then I expect to return by way of Cincinnati and Louisville. Here let me say that Mr. Barret, or no other man, has sold a dollar's worth of stock for me, or have I sold any. If Mr. Barret is selling it—his own stock—I cannot prevent it; he has the right to do so. You speak of the demand falling off for butter; why it has not commenced. It may lag for a few weeks, but what of that. You buy all the butter you can get at a fair price and keep it, the demand will only begin after the first of January. When I see you we will talk over matter- more fully. I wrote Mr. Barret to send me some one while I was gone. McTalton has come over. I hope the factory will not forget in their next to keep up the the quality of the article.

Very truly, JAMES WILSON.

30 The exhibit marked "E" being a dispatch from Wilson to Crump, is in words and figures as follows, to wit:

EX'B'T "E." DISPATCH.

CINCINNATI, O, *July* 28, 1879.

To W. H. Crump, care Crump & Sisson, 135 W. Main.

Martin returned confirming my views that second floor is thrown away. Original plan was for all churning on second floor, finishing on first floor. If trustees have taken responsibility of changing plan, they must assume all responsibility if it proves a failure, which will be beyond question, if churning is done as now proposed; it had better be changed now before it goes farther; place the steam. elevator in building next Main street. See Kreiger, Taggart, and Barret at once; if it suits them, then you and I are relieved; but I say they did wrong to change the plan, and I told you so when I was there.

JAMES WILSON.

31 The exhibit marked "F" being dispatch from Wilson to Crump, is in words and figures as follows, to wit:

EXH'B'T "F." DISPATCH.

ST. LOUIS, *Nov.* 5, 1879.

To W. H. Crump, c'r Crump & Sisson, 135 W. Main St.:

The half interest is closed with B. Cincinnati wanted it bad; under no circumstances let any one know till B. returns and makes it known.

J. W.

Order—Filing Att'y's Rep't.

And, at a court held for the court aforesaid on the 24th day of December, 1880, came H. B. Phillips, attorney for the non-resident defendant, and filed his report herein.

And it is ordered that said Phillips be, and is, allowed the sum of $5.00 for his services, to be paid by plaintiff and taxed as costs herein.

Said report of attorney is in words and figures as follows, to wit:

Louisville Chancery Court.

32 *Report of Att'y, N. R.*

W. H. CRUMP *vs.* JAMES WILSON, &c.

Having been appointed attorney for the non-resident defendant, James Wilson, herein, I would respectfully report that having written to said James Wilson at New York city, the letter was returned unopened and undelivered from said New York postoffice.

After a careful examination of the case, I am unable to make an affirmative defence.

Respectfully submitted. H. R. PHILLIPS,
Att'y for Non-Resident Def't, James Wilson.

Am'd Pet. Filed.

And at a court held for the court aforesaid, on the 11th day of January, 1881.

Came plaintiff, by Emmet Field, counsel, and filed an amended petition herein.

The amended petition of plaintiff is in words and figures as follows, to wit:

33 *Amended Petition.*

Louisville Chancery Court.

W. H. CRUMP, Plaintiff,
vs.
JAMES WILSON AND THE SOUTHERN DAIRY COMPANY OF LOUISVILLE,
Defendants.

The plaintiff, by leave of court, amends his petition herein, and says that the stock of the Southern Dairy Company of Louisville, mentioned in the petition, is now, and was when said petition was filed, worth its face value; that is, each share of said stock is worth the sum of one hundred dollars, not $50.00 only, as stated in the original petition.

He further says that at the time he instituted this suit, and at the time the defendant, The Southern Dairy Company of Louisville, was summoned to answer by the service of process on it herein, there was not less than two hundred and fifty shares of the stock mentioned in the petition in said corporation, held by and
34 standing in the name of said Wilson on the books of said corporation. Plaintiff says that the said Wilson is a non-resident of this State, and is now absent therefrom; he is a resident of the city of New York, in the State of New York, and that city is his postoffice address.

Wherefore plaintiff prays that the said Southern Dairy Company of Louisville be compelled to answer and state how many shares of stock therein were standing in the name of said Wilson on its books at the time it was summoned to answer this action.

He further prays as in his original petition, and for all other proper relief.

EMMET FIELD,
For Plaintiff.

W. H. Crump says he believes the statements of the foregoing amended petition are true.

W. H. CRUMP.

Subscribed and sworn to before me by W. H. Crump, this, the 11th day of Jan'y, 1881.

EMMET FIELD, *N. P., J. C.*

35 *Warning Order on Am'd Pet.*

COMMONWEALTH OF KENTUCKY, *Louisville Chancery Court:*

The defendant, James Wilson, is hereby warned and ordered to appear and defend this action within sixty days from the date hereof.

It is ordered that H. R. Phillips be, and is hereby, appointed upon this amended petition to inform said James Wilson of the nature and pendency of this action.

Witness my hand, this 12th day of January, 1881.

JNO. H. WELLER, *Clk.*
By JNO. T. SWEENY, *D. C.*

And on said amended petition there issued a summons, which is in words and figures as follows, to wit:

Sum's on Am'd Pet.

The Commonwealth of Kentucky to the marshal of the Louisville chancery court, Greeting:

We command you to summon the Southern Dairy Company of Louisville, Kentucky, to answer an amended petition exhibited
36 against it in our Louisville chancery court by W. H. Crump, 35614, and warn it that upon failure so to do, for twenty days after service hereof, if in Jefferson county, or for thirty days, if elsewhere in the State, judgment may be rendered by default, or answer compelled, or proof taken at petitioner's option, and make due return hereof within sixty days from the date hereof.

Witness John H. Weller, clerk of our said court, at the courthouse in Louisville, this 12th day of January, 1881.

JOHN H. WELLER, *Clerk.*
JNO. T. SWEENY, *D. C.*

Marshal's Ret'n on Sum's.

And on said summons the marshal made the following return, to wit:

Executed on the Southern Dairy Company of Louisville, Kentucky, January 13th, 1881, by delivering a copy of this summons to J. G. Barret, president thereof.

W. H. BAILEY, *M. L. C. C.*,
By J. A. KELLY, *D. M.*

Order—Fi. Ans'r, &c.

And at court held for the court aforesaid, on the 4th day
37 February, 1881, came the defendant, the Southern Dairy Company, by Barret & Brown, counsel, and filed its answer and interpleader herein.

Said answer and interpleader is in words and figures as follows, to wit:

Answer & Interpleader of Southern Dairy Co.

Louisville Chancery Court.

W. H. CRUMP *vs.* JAMES WILSON, &c.

The defendant, The Southern Dairy Company of Louisville, Kentucky, for answer to so much of the petition and amended petition herein, as it is advised is material to be by it answered, says:

That it has no knowledge or information whatever, nor has its chief officer, or any of its managers, so far as by it is known, any knowledge or information as to the alleged dealings, agreements, or contracts between plaintiff and defendant James Wilson. It knows nothing concerning its alleged indebtedness of defendant
38 James Wilson, to plaintiff. It is true that defendant, James Wilson, became at the organization of The Southern Dairy Company of Louisville (this defendant), one of its stockholders in a very large amount.

From time to time said Wilson sold divers shares of this stock, and the same was regularly transferred on the books of this defendant to the new owner thereof.

At the time of filing the petition herein there stood on the stock-books of this defendant two hundred and fifty (250) shares of this defendant's capital stock in the name of defendant, James Wilson, and the same have not since been transferred to any other name on the said books.

This defendant has been notified, and believes the fact to be, that prior to the institution of this action, to wit, on the 26th October, one H. K. Thurber, a resident of the city of New York, bought all and every the said 250 shares of stock from defendant, Wilson, and received the certificates thereof from defendant, Wilson, and
39 now holds and owns them. Said H. K. Thurber has notified the president of this defendant of such fact, and claims to

be entitled to have said stock transferred into his own name, or that of any assignee of him, whenever he or such assign may choose to surrender the original certificates and demand new ones in lieu thereof.

This defendant is informed and believes the fact to be that at the time of said sale defendant, Wilson, endorsed and delivered the certificates of such stock to said Thurber.

The stock of this defendant, under its corporate seal and the signature of its officials, and the same pass by endorsement and delivery, so as to give good title to the *bona fide* purchaser thereof from the person named in such certificate.

This defendant says it cannot, and denies that it is compellable in law or equity to, cancel the stock standing in the name of defendant, Wilson, on its books, or any part thereof, and denies that
40 it can be called upon or compelled to transfer or cancel any part thereof to plaintiff or any other, except on the production and surrender of the new outstanding certificates. This defendant has no right to compel the production of said certificates, or any of them, for cancellation or transfer.

Defendant says it is not in anywise interested in the matters alleged by plaintiff further than having its certificates outstanding and sold to *bona fide* third parties; it denies that it ought to be compelled in any way to change, or attempt to change any rights, or alleged rights of other parties.

This defendant had nothing to do with the sale or assignment of stock from defendant Wilson to said Thurber. It denies that it has, or has had, at any time any collusion with either of them.

This defendant says that it is ready at all times to obey the judgment of the court, but it says that it ought not to be ad-
41 judged to do anything, either by way of cancellation or transfer of such stock unless said Thurber and his assigns be brought before the court and heard as to their claims and rights.

Defendant therefore disclaiming any and all rights or ownership in or to any part of said stock, prays that plaintiff be compelled to bring the said H. K. Thurber before the court and litigate with said Thurber the true ownership of said stock and all rights thereto.

The defendant denies that the plaintiff is the owner of any part of said stock, or entitled to have any one or more shares of it transferred to him, or any share or shares issued to him, or that said stock is liable to satisfy any demand of plaintiff against defendant Wilson.

Defendant prays to be hence dismissed with costs and all proper relief.

BARRETT & BROWN,
For Southern Dairy Co.

42 J. G. Barrett says he is the president and chief officer of the Southern Dairy Company, of Louisville, and that the foregoing statements are true as he verily believes.

J. G. BARRETT.

Subscribed and sworn to by J. G. Barret before me, this 3rd day of February, 1881.

JOHN BARRET, *N. P. J. C.*

And at a court held for the court aforesaid on the 18th day of February, 1881.

Order Filing Reply.

Came the plaintiff by Field, counsel, and filed his reply to the answer of the Southern Dairy Company.

Ord. Fi. Am'd Pet.

And also filed an amended petition herein, making H. K. Thurber a party defendant herein.

The reply of plaintiff to the answer of the Southern Dairy Company is in words and figures as follows, to wit:

Reply.

Louisville Chancery Court.

W. H. CRUMP *vs.* JAMES WILSON, &c.

43 The plaintiff, W. H. Crump, for reply to the answer of the defendant, The Southern Dairy Company of Louisville, says the said company was not notified by the said H. K. Thurber, that he had, or pretended to have any claim upon the stock mentioned in the answer of the said company herein, or that he was or pretended to be the owner thereof until long after the institution of this action, and not until long after the pretended transfer of the certificates of said stock is alleged to have been made.

Plaintiff says the said company was not notified of the said pretended transfer of the certificates of said stock until about the 1st day of February, 1881, and the plaintiff has no knowledge of the said pretended transfer until after that date.

Plaintiff says he has no knowledge sufficient to form a belief that prior to the institution of this action, to wit, on the 26th day
44 of October, or at other time, one H. K. Thurber bought all and every the said 250 shares of stock from the defendant Wilson and now holds and owns them; and he denies each and all of the said allegations; he has no knowledge or information sufficient to form a belief that at the time of the alleged sale the defendant Wilson endorsed and delivered the certificates of such stock to said Thurber, and he denies the said allegations.

He denies that the stock in the defendant company is represented by certificates therefor, which pass by endorsement and delivery, so as to give good title to the *bona fide* purchaser thereof from the person named in such certificate.

Plaintiff denies that the said company cannot and is not compellable in law or equity to cancel the stock standing in the name of the defendant Wilson on its books, or any part thereof. And he denies

that said company cannot be called upon or compelled to
45 transfer any part thereof, except upon the production and surrender of the now outstanding certificates. And, having fully replied, he prays as in his petition, and for all other proper relief.

EMMET FIELD,
For Plaintiff.

W. H. Crump says he believes the statements of the foregoing reply are true.

W. H. CRUMP.

Subscribed and sworn to before me by W. H. Crump, this 18th day of February, 1881.

EMMET FIELD,
N. P. J. C., Ky.

The amended petition of plaintiff is in words and figures as follows, to wit:

Amended Petition.

Louisville Chancery Court.

W. H. CRUMP, Plaintiff,
vs.
JAMES WILSON, THE SOUTHERN DAIRY COMPANY OF LOUISVILLE, and H. K. THURBER, Defendants.

46 The plaintiff, W. H. Crump, amends his petition herein, and says that on or about the 1st day of February, 1881, John G. Barret, Esq., the president of the defendant The Southern Dairy Company of Louisville, showed him a letter which the said Barret had recently received from one H. K. Thurber, of the city of New York, in which the said Thurber pretended to have purchased, on on the 26th day of October, the 250 shares of stock in the said com pany then and now standing upon the books of the said company in the name of the defendant Wilson, and which in fact and of right belong to this plaintiff, as stated in his petition herein.

Plaintiff says he had no knowledge of said pretended transfer until he was shown the said letter as above mentioned. He says that although the pretended transfer of the certificates of said stock from Wilson to Thurber is said to have been made on the 26
47 day of October, 1881, the said Thurber never notified the said company of the same, or that he pretended to have any interest in or claim to the said stock until about the 1st day of February, 1881, notwithstanding the fact that the said certicates upon their face gave him notice that the stock was transferable only on the books of the company.

Plaintiffs avers that the said Thurber has never paid any value for said stock, and that the transfer of the certificates therefor has never been made to him, or if made, it was not made until long after

the 26th day of October, 1881, and after the institution of this action.

Plaintiff makes said Thurber a party defendant hereto that he may set forth his interest in said stock, if any he has, and he is called upon to do so, or be forever barred.

The said H. K. Thurber is a non-resident of this State, and plaintiff believes he is now absent therefrom. Said Thurber is a
48 resident of the State of New York, and the city of New York, and the nearest post office to his residence is in the said city of New York.

Wherefore plaintiff prays as in his petition herein, and for all other proper relief.

EMMET FIELD,
For Plaintiff.

W. H. Crump says he believes the statements of the foregoing amended petition are true.

W. H. CRUMP.

Subscribed and sworn to before me by W. H. Crump, this, the 18th day of February, 1881.

EMMET FIELD,
N. P., J. C. K'y.

W. O. on Am'd Pet.

Commonwealth of Kentucky. Louisville Chancery Court.

The non-resident defendant, H. K. Thurber, is hereby warned and ordered to appear and defend this action within sixty days from the date hereof. And it is ordered that John C. Walker, an attorney of this court, be, and is hereby, appointed upon this amended
49 petition to inform said H. K. Huber of the nature and pendency of this action.

Witness my hand, this 18th day of February, 1881.

JNO. H. WELLER, *Cl'k*,
By J. G. WALKER, *D. C.*

Att'ys Rep't Filed.

And at a court held for the court aforesaid, on the 25th day of February, 1881:

Came H. R. Phillips, attorney for the non-resident defendant, and filed his report herein.

And it is ordered that the said Phillips be and he is allowed the sum of $5.00 for his services, to be paid by plaintiff and taxed as costs herein.

Report of Att'y for non-Resident Def't.

The report of attorney is in words and figures as follows, to wit:

W. H. CRUMP, Plaintiff, *vs.* JAMES WILSON, &c., Defendants.

H. R. Phillips, having been duly appointed to inform the

50 non-resident defendant, James Wilson, of the nature of the petition and amended petition filed in this court against him, reports that he has written to the said defendant James Wilson, and that he has received no answer; that he has carefully examined the papers in this case and can make no affirmative defense.

H. R. PHILLIPS.

Order—Fi. Att'y Rep't & All'nce.

And at a court held for the court aforesaid, on the 4th day of March, 1881, came Jno. C. Walker, attorney for the non-resident defendant, and filed his report herein.

And it is ordered that said Walker be, and he is, allowed the sum of $5.00 for his services, to be paid by plaintiff, and taxed as costs herein.

Said report is as follows, to wit:

Report by Att'y for Non-resident.

Louisville Chancery Court.

W. H. CRUMP, &c., Plaintiff,
ag'st
JAMES WILSON, &c., Defendants.

51 Having been by law appointed herein in this action to correspond with and defend for the non-resident defendant, H. K. Thurber, I at once examined the case, fully read it all, and then, on the 19th day of February, 1881, wrote said defendant, H. K. Thurber, a letter directed to the city of New York, advising him of the nature and object of this suit, and directed or endorsed thereon on the envelope, if not called for in ten days to return to me here; it has not been returned. I suppose it was received. I do not know of any defense I can make for said action for him; and can report none and make none, affirmative or otherwise.

He denies all the averments and charges therein to his prejudice, and admits all in his favor, and asks the court to protect his interest herein.

All which is reported, &c., to court, &c.

JNO. C. WALKER,
Atto. Appointed for Non-Resident Def't.

52 And at a court held for the court aforesaid, on the 17th day of June, 1881, came the plaintiff, by Field, counsel, and filed copy of the petition. Amended petition, with summons attached, &c., served upon the defendant, James Wilson.

Said petition, amended petition, and officers return on summons, &c., are in words and figures as follows, to wit:

Ord. Filing Co. of Pet., &c., & sums on Def't Wilson.

Louisville Chancery Court.

W. H. CRUMP, Plaintiff,

vs.

JAMES WILSON and THE SOUTHERN DAIRY COMPANY, of Louisville, Defendants.

The plaintiff, W. H. Crump, says: That on or about the —— day of April, 1879, he and the defendant, James Wilson, entered into a verbal contract, by which the plaintiff undertook and agreed to assist the said defendant in selling the right to manufacture in the
53 State of Kentucky and Indiana, animal fats, for the purpose of food, in the form of butter and other products, the manufacture and preparation of ole-margerine of stearine of oils, and all products of the same, or of animal fats, and the preparation of articles in which said products or any of them are used under a patent controlled by the said defendant.

Plaintiff says that by the terms of his said contract the said defendant was to receive the sum of twelve thousand dollars for the right to manufacture under said patent in the State of Kentucky, and eight thousand dollars for the right to manufacture under said patent in the State of Indiana, and that all he might receive for either State above the amount for which the right to manufacture in that State was sold was to be divided equally between the said Wilson and himself.

Plaintiff says he had been engaged for more than a year
54 in the manufacture of olemargerine in the city of Cincinnati under the said patent, and was familiar with the process by which it was made, and with the machinery used in said process.

He says that as soon as the said contract was made he went to work to interest men of capital in this city in the manufacture of olemargerine under said patent, with the view of disposing of the right to manufacture in accordance with his contract with said Wilson. He says he advised the said Wilson from time to time of the progress he was making; and when it became apparent that the right to manufacture under said patent in Kentucky could be disposed of here, the said Wilson came to this city, and the right to manufacture under said patent was disposed of by the formation of corporation, organized under the incorporation law of the
55 State, which corporation is styled in the articles of incorporation the Southern Dairy Company of Louisville, and that in the name of said corporation.

He says the right to manufacture olemargerine and other products before mentioned under said patent was sold to the Southern Dairy Company of Louisville, by the said corporation issuing $100,000 of stock in said corporation in shares of $100 each, of which $50,000, or five hundred shares, was taken by the incorporators other than said Wilson. And the same amount was to have been issued to said Wilson, but before the stock was issued to him he sold one hundred shares of it at the price of fifty cents on the dollar, or for the

gross sum of $5,000.00, and received the money therefor. Then $40,000 worth of said stock, or four hundred shares thereof, was issued to said Wilson, and by the articles of incorporation the
56 stock so issued to him was to be forever free from any charge or assessment whatever. A certified copy of the articles of incorporation of The Southern Dairy Company of Louisville, is here filed as part hereof, marked "Exhibit A."

Plaintiff says the right to manufacture olemargerine and the other products aforesaid, in the State of Indiana, under said patent, was sold to the said Southern Dairy Company of Louisville, on the — day of ——, 1879, by the said company amending its articles of incorporation, and issuing to said Wilson $100,000 worth of stock therein, or one thousand shares of $100 each, which stock, by the terms of said amended articles was to be forever free from any charge or assessment for any purpose. The said Wilson transferred five hundred shares of the stock last mentioned, or $50,000 worth, to the members of the said company, and the other five hundred
57 shares, he retained as the price to use said patent in the State of Indiana, was sold to said company.

A copy of the said amended articles is here filed as part hereof, marked Exhibit B.

Plaintiff says the stock of said corporation is transferable only on the books of the company.

He says that the defendant Wilson was one of the incorporators of the Southern Dairy Company of Louisville.

He says the stock of said company issued to the other incorporators was taken by them at the price of fifty cents on the dollar, or $50.00 for each and every share thereof, and the one hundred shares of said stock sold by said Wilson as aforesaid was sold by him at that price, and he received the money therefor.

He says the other incorporators paid for the five hundred shares of stock purchased by them for the right to use said patent in Kentucky as aforesaid by paying fifty cents on the dollar therefor
58 to the company as a working capital. He says that at the time said stock was issued to said Wilson in payment of the right to manufacture under said patent as aforesaid in the State of Kentucky and Indiana, the same was worth the sum of fifty cents on the dollar, and it is now worth that sum. He says the said Wilson has received greatly more than the sum of $1,200 in value for the right to manufacture under said patent in the State of Kentucky, and he has received greatly more than $8,000 in value for the right to manufacture thereunder in the State of Indiana.

Plaintiff says that in accordance with his contract to assist the said Wilson to sell the right to manufacture under said patent as aforesaid, he prepared statements giving in detail the cost of manufacturing under said patent, and all other information necessary to an intelligent understanding of the process. These he ex-
59 hibited to most of the gentlemen who subsequently organized the Southern Dairy Company of Louisville, and to others, and by his practical knowledge of the process of manufacturing under said patent, and the cost and demand of the product made

thereby, enabled them to estimate the profits to be realized therefrom.

And after the said corporation was organized he superintended the construction of its factory in this city, and did all in his power to give it a successful start. But notwithstanding the contract between the said Wilson and himself, that they were to share equally in the value realized after deducting $12,000 as the price of the right to the State of Kentucky, and $8,000 as the price of the right to the State of Indiana as aforesaid, the said Wilson has failed and refused, and still fails and refuses, to give him any part of the said stock, and to give him any part of the sum for which he has
60 sold such parts of said stock as he has disposed of, although plaintiff has demanded his part of the same.

And the said Wilson has fraudulently converted all of the said stock, and all of said money to his own use.

Plaintiff files herewith, as part hereof, two letters written him by the said Wilson, one of which bears date Cincinnati, July 2nd, 1879, and the other St. Louis, November 27, 1879. He also files, as part hereof, two telegrams sent him by said Wilson, one from Cincinnati, July 28, 1879, and the other from St. Louis November 6th, 1879. Said exhibits are marked C, D, E, and F, respectively.

Plaintiff says the defendant, The Southern Dairy Company of Louisville, is a corporation as aforesaid, duly organized under the incorporation law of this State, and as such can sue and be sued, contract and be contracted with.

61 He says John G. Barret is its president and chief officer, and the principal place of business thereof is in this city.

He says a large amount of the stock issued to the defendant Wilson as aforesaid still stands upon the books of said corporation in the name of said Wilson, and is held by him. He says that under his contract with said Wilson he is entitled to and is the owner of one-half of the stock which said Wilson received for the right to use said patent in the States of Kentucky and Indiana as aforesaid, and that one-half thereof, after deducting the said $20,000.00 worth as the amount Wilson was to receive, before plaintiff's interest in the proceeds commenced, is $30,000 worth, or three hundred shares.

The said James Wilson is a non-resident of this State, and is a resident of the State of New York, and city of New York, and his postoffice address is New York city. Wherefore plaintiff
62 prays that he be adjudged to be the owner of three hundred shares of the said stock. He further says that the defendant, the Southern Dairy Company of Louisville, be ordered and compelled to cancel the stock now standing upon the books, in the name of said Wilson, to that number and extent; and that the said company be ordered and compelled to issue to plaintiff certificates for the said number of shares of stock in said company, the same to be forever free from any charge or assessment by the company; or if the said Wilson has not retained as much of said stock as belonged to plaintiff, he prays judgment against him for a sufficient sum to cover the deficiency.

He further prays judgment for his costs expended herein, and for all other proper relief.

EMMET FIELD,
For Plaintiff.

W. H. Crump, the plaintiff herein, says he believes the
63 statements of the foregoing petition are true.

W. H. CRUMP.

Subscribed and sworn to before me by W. H. Crump, this the 24th day of November, 1880.

EMMET FIELD,
N. P., J. C. Ky.

COMMONWEALTH OF KENTUCKY, *Louisville Chancery Court:*

The non-resident defendant, James Wilson, is hereby warned and ordered to appear and answer the foregoing petition within sixty days from this date.

It is further ordered, that H. R. Phillips be, and he is, appointed to inform said James Wilson of the nature and pendency of this action.

November 26th, 1880. JNO. H. WELLER, *Clk*,
By JNO. T. SWEENY, *D. C.*

A copy. Att.: JNO. H. WELLER, *Clerk.*

The Exhibit marked A is in words and figures as follows, to wit:

64 These articles of incorporation entered into between James Wilson, John S. Brannin, A. O. Brannin, John G. Barret, George T. Wood, and John D. Taggart, witnesses ——:

That the said parties do hereby form an incorporated company under and in conformity with the provision of chapter 56 of the General Statutes of the State of Kentucky; and for the purpose of perfecting such incorporation do covenant and agree to and with each other, as hereinafter set forth, and do adopt the following articles of incorporation:

Article 1st.

This corporation shall be known and styled as the Southern Dairy Company, of Louisville.

Article 2nd.

The place of business of said company, and its chief office, shall be in the city of Louisville, Kentucky.

Article 3rd.

The general nature of the business of said corporation shall be the treatment of animal fats for purposes of food in the form
65 of butter and other products, the manufacture and preparation of olemargerine of stearine of oils, and all products of

the same, or of animal fats, and the preparation of articles in which said products or any of them may be used, and in selling and dealing of all such.

Article 4.

The authorized capital stock of said corporation shall be, and is, the sum of one hundred thousand ($100,000) dollars, paid up and to be paid as follows:

The said capital stock shall be divided into one thousand shares of the par value of one hundred dollars each. Of said stock four hundred (400) shares aggregating a par value of forty thousand ($40,000) dollars, and declared to belong to the subscriber, James Wilson; and it is expressly declared and understood that he has fully paid for the same by the assignment, transfer, and conveyance unto said corporation of certain patent rights, fran-
66 chises, licenses, and privileges connected with and valuable for the purposes of the corporation and its business, the said transfer and assignment being made by the procurement of said Wilson directly from the United States Dairy Company to said corporation instead of to said Wilson, and by him to said corporation; and the said four hundred shares, and every one of them, are expressly declared to be free from any and all call, assessment, and contribution whatever, of any kind, or for any purpose whatever; and the residue of the capital stock of the corporation being six hundred shares of the aggregate par value of sixty thousand ($60,000) dollars, is declared to belong to the other subscribers hereto, as follows, to wit: John S. Brannin owns one hundred shares; A. O. Brannin owns one hundred shares; John G. Barret owns two hundred shares; George T. Wood owns one hun-
67 dred shares, and John D. Taggart owns one hundred shares; for which they or their assigns are to pay the sum of five thousand dollars ($5,000) for each one hundred shares, by them severally subscribed and owned as aforesaid, making an aggregate of thirty thousand ($30,000) dollars for the whole of said six hundred shares; and such payment is to be by them severally made in such sums and at such times as may be called for by the board of directors of the corporation.

It is expressly stipulated and declared that no greater amount than the sum of five thousand ($5,000) shall be due or assessed or called for on or on account of any one hundred shares subscribed and owned as last aforesaid, nor any greater proportion or any number of such shares; and whenever the said shares shall have actually paid up the sum of fifty per cent. of the par value of the same, that is, $5,000 on the one hundred shares, or in that proportion, then such stock shall be for all purposes held and
68 treated as fully paid up, and not under any pretense or demand of any kind held liable to any further call, assessment, or contribution on the holder thereof, liable to pay any sum whatever over and above fifty per centum of the par value of such stock by him held, the true intent and meaning being that a payment of fifty per centum of the par value shall operate as a pay-

ment in full, and the said payment as made and when made are to constitute a fund for renting, purchasing, or building necessary premises and for purchasing machinery, apparatus, and material, and for paying the necessary expenses of the corporation, and for paying to James Wilson, one of the subscribers, the sum of five thousand dollars, a debt due him, and for constituting a working capital.

Article 5.

The stock of the corporation shall be assignable upon the books of the corporation under such regulations as shall be pre-
69 scribed by the by-laws.

Article 6th.

The stockholders shall adopt a body of laws, which may be amended from time to time as therein prescribed.

Article 7th.

The time of the commencement of the corporation shall be the 3 day of June, 1879, and it shall exist for thirty years.

Article 8th.

The affairs of the corporation shall be conducted by a board of six directors. The present subscribers shall constitute the first board of directors, and shall continue as such until their successors are elected and qualified.

The board of directors shall hereafter be chosen in the second Tuesday in May in each year, by a vote of stockholders. The board of directors shall choose one of their number as president, and shall elect a secretary and treasurer, who may (if they choose) be
70 one of their number; and they may require bond from such officer.

And the office of secretary and treasurer may be filled, if the directors see fit, by one person.

Article 9th.

The highest amount of indebtedness or liability to which the said corporation may be subjected, or which it may incur, is hereby fixed at the sum of ten thousand ($10,000) dollars.

Article 10th.

The private property of the stockholders shall be exempt from all liability for the debts of said corporation.

In witness whereof, the said subscribers and corporators have hereto set their hands and seals, at Louisville, Kentucky, this 3rd day of June, 1879.

JAMES WILSON. [SEAL.]
JNO. S. BRANNIN. [SEAL.]
A. O. BRANNIN. [SEAL.]
J. G. BARRET. [SEAL.]
GEORGE T. WOOD. [SEAL.]
JOHN D. TAGGART. [SEAL.]

71 I, Wm. E. Loran, clerk of the county court of Jefferson county, in the State of Kentucky, do certify that on this day the foregoing articles of incorporation was produced to me in my office, and acknowledged and delivered by James Wilson, John S. Brannin, A. O. Brannin, J. G. Barret, George T. Wood, and John D. Taggart, parties thereto, to be their act and deed, and that I have recorded it and this certificate in my said office.

Witness my hand, this 5th day of June, 1879.

WM. E. LORAN, *Clk.*

A copy.
Att.:

WM. E. LORAN, *Clk,*
By JNO. C. LORAN, *D. C.*

A copy.
Att.:

JNO. H. WELLER, *Clk,*
By JNO. T. SWEENEY, *D. C.*

The exhibit marked B is in words and figures as follows, to wit:

Corporation Notice.

Notice is hereby given that the articles of incorporation of
72 the Southern Dairy Company of Louisville are amended by the unanimous vote of all the stockholders, as follows:

1. The capital stock of the corporation shall be and is increased by the sum of $100,000, and the total capital stock shall be $200,000, instead of $100,000, as heretofore.

2. The whole amount of the $100,000 of additional and increased capital stock, viz, $100,000, is set apart and to be issued to James Wilson and his assigns, as fully paid up and wholly unassessable stock, free from any other or further calls, in consideration of license under patent to the exclusive right, use, and manufacture within the State of Indiana, except the counties of Lake and Porter, assigned by Hippolyts Niege to the United States Dairy Company, and by said company assigned to this corporation through the procurement and purchase of said Wilson.

All the original articles of incorporation, subject only to these modifications, are reaffirmed and adopted.

73 JOHN D. TAGGART,
JAMES WILSON,
JOHN E. NORRIS,
GEORGE BIRCH,
GEORGE T. WOOD,
J. G. BARRET,
OSCAR FENLEY,
H. C. RODES,
E. H. OWINGS.

I, Wm. E. Loran, clerk of the county court of Jefferson county, in the State of Kentucky, do certify that on this day the foregoing articles of incorporation was produced to me in my office, and acknowledged and delivered by John D. Taggart, James Wilson, John

E. Norris, and George Birch, parties thereto, to be their act and deed.

Witness my hand, this 24th day of July, 1873.

WM. E. LORAN, *Clk.*

I, Wm. E. Loran, clerk of the county court of Jefferson county, in the State of Kentucky, do certify that on this day the foregoing articles of incorporation was again produced to me in my
74 office, and acknowledged and delivered by Oscar Fenley, H. C. Rodes, and E. N. Owings, parties thereto, to be their act and deed.

Witness my hand, this 31st day of July, 1879.

WM. E. LORAN, *Clk.*

I, Wm. E. Loran, clerk of the county court of Jefferson county, in the State of Kentucky, do certify that on this day the foregoing articles of incorporation was again produced to me in my office, and further and fully acknowledged and delivered by J. G. Barret and George T. Wood, parties thereto, to be their act and deed, and that I have recorded it, this and the foregoing certificates in my said office.

Witness my hand, this 7th day of August, 1879.

WM. E. LORAN, *Clk.*

A copy. Att: WM. E. LORAN, *Clk*,
By JNO. C. LORAN, *D. C.*

A copy. Att: JNO. H. WELLER, *Clk*,
By JNO. T. SWEENY, *D. C.*

75 The exhibit marked C is in words and figures as follows, to wit:

CINCINNATI, *July 25th*, 1879.

W. H. CRUMP, ESQ.

DEAR SIR: I had your note before me duly; strange to say the stearine was sold yesterday afternoon to Gest, a soap man. I requested Mr. Bailey to advise you, which I presume he has done; I also had your dispatch about Kraiger, which I showed to his son, who did not seem to mind it much; he said that I could or did not go down on account of the expense. I hope the old man is better; a sample of several things went down to day. If duplicates are to be made in Louisville, please see that they are not blotched, but made properly. You know the object in view, it implies success as speedily as possible. Keep me fully advised of what goes on, and the progress of the machinery. There is more demand here for
76 butter than a week ago among city dealers, also from Illinois. He had a letter to day from a man who says he can sell, or will want about six thousand pounds per week, shortly. Butter will be high, I think, from several causes. I trust so, for the sake of our new company in Louisville. I wish it to be a complete success, so that our Louisville friends will not be disappointed.

Most truly, JAMES WILSON.

A copy. Att.: JNO. H. WELLER, *Clk.*
By JNO. T. SWEENY, *D. C.*

The exhibit marked D is in words and figures as follows, to wit:

ST. LOUIS, *Nov. 27th*, 1879.

W. H. CRUMP, ESQ.

DEAR SIR: I have your letter this morning, and it reaches me entirely broken down with work; up almost every night until one o'clock looking after fat. I also received your first letter. I
77 had hoped to have been in Louisville before this. I am going to Chicago for a few days; then I expect to return by way of Cincinnati and Louisville. Here let me say Mr. Barret, or no other man, has sold a dollar's worth of stock for me, or have I sold any. If Mr. Barret is selling his own stock, I cannot prevent it; he has the right to do so. You speak of the demand falling off for butter. Why, it has not commenced; it may lag for a few weeks: but what of that! You buy all the butter you can get at a fair price, and keep it. The demand will only begin after the first of January. When I see you we will talk over matters more fully. I wrote Mr. Barret to send me some one while I was gone. Mr. Tarlton has come over. I hope the factory will not forget in their rush to keep up the quality of the articles.

Very, truly, &c., JAMES WILSON.

A copy. Att.: JNO. H. WELLER, *Clk.*
78 By J. T. SWEENY, *D. C.*

The exhibit marked E is in words and figures as follows, to wit:

Blank No. 1.

The Western Union Telegraph Company. This company transmits and delivers messages only on conditions limiting its liability, which have been assented to by the sender of the following message. Errors can be guarded against only by repeating a message back to the sending station for comparison, and the company will not hold itself liable for errors or delays in transmission or delivery of unrepeated messages.

This message is an unrepeated message, and is delivered by request of the sender under the conditions named above.

NORVIN GREEN, *President.*

A. R. BREWER, *Sec'y.* 1.65.

Read the notice at the top.

Dated Cincinnati, O., 28, 1879.
Received 12.21 p. m., July 28.

To W. H. CRUMP,
Care Crump & Sisson, 135 W. Main St.

79 Martin returned; confirms my views that second floor is thrown away; original plan was for all churning on second floor, finishing on first floor. If trustees have taken responsibility of changing plans, they must assume all responsibility; if it proves a failure, which will be beyond question if churning is done as now

proposed, it had better be changed now before it goes farther. Place the steam elevator in building next Main street. See Kreiger, Barret, and Taggart at once; if it suits them, then you and I are released; but I say they did wrong to change the plan, and I told you so when I was there.

109. Paid. JAMES WILSON.

A copy. 198.

Att: JNO. H. WELLER, *Clk.*
By JNO. T. SWEENY, *D. C.*

The exhibit marked F is as follows, to wit:

No. 44. Half-rate message.

80 The Western Union Telegraph Company. This company transmits and delivers messages only on conditions limiting its liability, which have been assented to by the sender of the following message. Errors can be guarded against only by repeating a message back to the sending station for comparison, and the company will hold itself liable for errors or delays in transmission or delivery of unrepeated messages, and is delivered by request of the sender under the conditions named above.

NORVIN GREEN, *President.*

A. R. BOONE, *Sec'y.* 100 B.

Read the notice at the top.

Dated St. Louis, 5, 1879.
Received 10.5 a., Nov. 6.

To W. H. CRUMP,
C'r Crump & Sisson, 135 W. Main St.

The half interest is closed with B., Cincinnati; wanted it bad; under no circumstances let any one know till B. returns and makes it known.

25 p'd. 601. J. W.

A copy. Att: JNO. H. WELLER, *Clk.*
LOW, *Ch'y Clk.*

81 *Amended Petition.*

Louisville Chancery Court.

W. H. CRUMP, Plaintiff,
vs.
JAMES WILSON and THE SOUTHERN DAIRY COMPANY OF LOUISVILLE,
Defendants.

The plaintiff, by leave of court, amends his petition herein, and says that the stock of the Southern Dairy Company of Louisville mentioned in the petition is now, and was, when said petition was filed, worth its face value; that is, each share of said stock is worth

one hundred dollars; not $50.00 only, as stated in the original petition.

He further says at the time he instituted this suit, and at the time the defendant, The Southern Dairy Company of Louisville, was summoned to answer by the service of process on it herein, there was not less than two hundred and fifty shares of the stock mentioned in the petition in said corporation held by and standing in the name of said Wilson on the books of said corporation.

82 Plaintiff says that the said Wilson is a non-resident of this State, and is now absent therefrom. He is a resident of the city of New York in the State of New York, and that city is his postoffice address. Wherefore plaintiff prays that the said Dairy Campany of Louisville be compelled to answer and state how many shares of stock therein were standing in the name of said Wilson on its books at the time it was summoned to answer in this action.

He further prays as in his original petition, and for all other proper relief.

EMMET FIELD, *for Plaintiff.*

W. H. Crump says he believes the statements in the foregoing amended petition are true.

W. H. CRUMP.

Subscribed and sworn to before me by W. H. Crump, this, the 11th day of January, 1881.

EMMET FIELD,
N. C. J. P. K'y.

83 A copy. Att.: JOHN H. WELLER,
Cl'k Lou. Ch'y C't.

COMMONWEALTH OF KENTUCKY, } *sct:*
Louisville Chancery Court, }

The defendant, James Wilson, is hereby warned and ordered to appear and defend this action within sixty days from the date hereof.

It is ordered that H. R. Phillips be, and he is hereby, appointed, upon this amended petition, to inform said James Wilson of the nature and pendency of this action.

Witness my hand, this 12th day of January, 1881.

JNO. H. WELLER, *Cl'k,*
By JNO. T. SWEENY, *D. C.*

A copy. Att.: JAS. H. WELLER,
Cl'k Lou. Ch'y C't.

The Commonwealth of Kentucky, Greeting:

We command you to summon and warn James Wilson to
84 appear and answer the annexed petition and amended petition exhibited against him in our Louisville chancery court by W. H. Crump, No. 35614, and he is hereby warned that, upon failure so to do for sixty days after service hereof, judgment may be

rendered by default, or answer compelled, or proof taken, at petitioner's option; and make due return hereof within sixty days from the date hereof.

Witness John H. Weller, clerk of our said court, at the courthouse in Louisville, the 30th day of May, 1881.

JNO. H. WELLER, *Clerk*,
By JNO. T. SWEENY, *D. C.*

The Commonwealth of Kentucky, Greeting:

We command you to summon and warn H. K. Thurber to appear and answer the annexed petition and amended petition exhibited against him in our Louisville chancery court by W. H. Crump, No. 35614, and he is hereby warned that, upon failure so to do
85 for sixty days after service hereof, judgment may be rendered by default, or answer compelled, or proof taken, at petitioner's option; and make due return hereof within sixty days from the date hereof.

Witness John H. Weller, clerk of our said court, at the courthouse in Louisville, the 19th day of July, 1881.

JNO. H. WELLER, *Clk.*

COMMONWEALTH OF KENTUCKY, }
Louisville Chancery Court, } *sct:*

I, John H. Weller, clerk of said court, do certify that the foregoing thirty (30) pages, this included, contain a true and full copy of the petition and exhibits thereto and the amended petition in the cause set out therein, as the same is now on file in my said office.

Witness my hand, this 30th day of May, 1881.

JNO. H. WELLER, *Clk*,
By JNO. T. SWEENY, *D. C.*

Affiant says that on the 14th day of June, 1881, at No. 16
86 and 18 Exchange Place, in the city of New York, and State of New York, he delivered a certified copy of the petition and amended petition and summons hereto attached to the defendant, James Wilson. The said James Wiison is personally known to affiant.

WILL. FRAZER.

CITY OF NEW YORK, }
State of New York, } *ss:*

Subscribed and sworn to before me by Will Frazer, this the 14th day of June, 1881. I hereby certify that the said Will. Frazer is personally known by me to be worthy of credit.

[SEAL.] WM. ARNOUX,
Notary Public, Kings & New York Co's.

Affiant says that on the 26th day of July, 1881, at W. B'way and Hudson Sts., in the city of New York and State of New York, he

delivered a certified copy of the petition and amended peti-
87 tion and summons, hereto attached, to the defendant, H. K. Thurber. The said H. K. Thurber is personally known to affiant.

WILL. FRAZER.

CITY OF NEW YORK, } 88:
State of New York, }

Subscribed and sworn to before me by Will. Frazer, this 26th day of July, 1881. I hereby certify that the said Will. Frazer is personally known by me to be worthy of credit.

WM. ARNOUX,
Notary Public, Kings & New York Co's.

Lea. to Retake Depo'n of Crump.

And at a court held for the court aforesaid, on the 16th day of July, 1881, on motion of plaintiff, by counsel, leave is given him to retake the deposition of W. H. Crump on notice.

Lea. Pl'ff. Dra. Co. Pet., &c.

And on further motion of plaintiff, by counsel, leave is given him to withdraw copy — petition served on defendant, Wilson.

88 And at a court held for the court aforesaid on the 11th day of October, 1881. This day came the defendant, H. K. Thurber, and produced and filed in open court on this, a day before the term at which this cause could be heard or tried, and before the trial thereof, his petition herein, verified with his oath, asking and praying for the removal of this suit into the circuit court of the United States, to be held in the district of Kentucky, at the city of Louisville, within which said district this suit is now pending; and at the same time and place did make and file with said petition, in this court, a bond with good and sufficient surety, conditioned that he shall and will enter in said circuit court of the United States, on the first day of its next session, a copy of the record in this suit, and that he shall and will pay all costs that may be awarded by the said circuit court of the United States, if said court shall hold that this suit has been wrongfully or improp-
89 erly removed thereto; and also that he shall and will enter special bail in this suit if special bail were originally requisite therein; and said bond being inspected and considered by the court is approved and accepted, and by J. L. Wheat, the surety therein, was acknowledged and delivered by said J. L. Wheat, and was ordered to be filed herein, which is now done. And the said surety is declared good and sufficient.

And thereupon, upon the motion of said H. K. Thurber, and in accordance with the prayer of this petition aforesaid, it is now considered and ordered that the said petition and bond be and are accepted, and that this court do proceed no further in or with this suit.

And said petition and bond are made part of the record herein.

And the clerk of this court is ordered to make and certify a full and complete transcript of the record and orders in this suit, in-
90 cluding said petition and bond and this order, for the purpose of being filed by said petitioner, H. K. Thurber, in the said circuit court of the United States for the district of Kentucky, at Louisville, Ky.

To all of which the plaintiff, having first objected, now excepts.

The petition of plaintiff for removal of this action to the United States district court is in words and figures as follows, to wit:

Petition of H. K. Thurber for Removal of this Cause into the Circuit Court of the U. S. for Trial.

Louisville Chancery Court.

H. CRUMP, Plaintiff, *vs.* JAMES WILSON, &c., Defendants.

This petitioner, H. K. Thurber, upon his oath, says: That this cause is a suit of a civil nature in equity, and is now pending in this honorable Louisville chancery court of the State of Kentucky, and that the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred ($500); that in this suit there is a controversy between citizens of different States; that is to say, a
91 controversy between the plaintiff, W. H. Crump, who is a citizen of the State of Kentucky, and this petitioner, H. K. Thurber, who has been made a defendant to this suit by said plaintiff, and who is a citizen of the State of New York.

Petitioner further says that in the said suit there is a controversy between said plaintiff, W. H. Crump, a citizen of the State of Kentucky, and this petitioner, made a defendant as aforesaid, a citizen of the State of New York, and the said controversy is wholly between citizens of different States, and can be fully determined between them and the plaintiff Crump and this petitioner.

And petitioner says that by reason of the premises he is entitled by law to have this suit removed into the circuit court of the United States for the proper district for trial, and that the circuit court of the United States in and for the district of Kentucky, sitting
92 at Louisville, in the State of Kentucky, is such proper court and district.

And your petitioner, being so entitled, desires and now makes petition and application that this suit be removed from this honorable court to the circuit court of the United States in and for the district of Kentucky, sitting at Louisville, Kentucky, and prays this court to so order and direct, and to that end he now, before the term at which this cause could be first tried, and before the trial thereof, files this, his petition, for the removal of said suit, into the circuit court, to be held in the district where said suit is now pending, which is the circuit court of the United States for the district of Kentucky, sitting at Louisville, Kentucky, as aforesaid.

And petitioner herewith, and as part of this petition, makes, tenders, and files a bond, with good and sufficient surety, for his enter-

ing in such circuit court, on the first day of its then next ses-
93 sion, a copy of the record in such suit, and for paying all costs that may be awarded by the said circuit court, if such court shall hold that such suit was wrongfully or improperly removed thereto, and also for then appearing and entering special bail in such suit, if special bail was originally requisite therein.

And your petitioner prays that this, his petition and his said bond be, by this honorable court, accepted, and that this court do proceed no further in said suit, and that the clerk of this court be ordered to certify a full and complete transcript of the record and orders in said suit for the purpose of being filed by your petitioner in the said circuit court of the United States for the district of Kentucky, at Louisville, Ky.

And your petitioner will ever pray.

HORACE K. THURBER.

STATE OF NEW YORK, }
City and County of New York, } ss:

94 Horace K. Thurber being duly sworn, says that he is above named petitioner, that he has read the foregoing petition, and knows the contents thereof, and that the same is true of his own knowledge, except as to such matters as are therein stated to be alleged in information and belief, and as to such matters he believes it to be true.

HORACE K. THURBER.

Sworn to before me, this 4th day of October, 1881.

CHAS. E. RUSHMORE,
Notary Public, N. Y. Co.

STATE OF NEW YORK, }
City and County of New York. } ss:

I, William A. Butler, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, being a court of record, do hereby certify that Charles E. Rushmore, before whom the annexed deposition was taken, was
95 at the time of taking the same a notary public of New York, dwelling in said city and county, duly appointed and sworn and authorized to administer oaths to be used in any court in said State, and for general purposes, and that his signature thereto is genuine, as I verily believe.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court and county, the 4th day of October, 1881.

[SEAL.] WM. A. BUTTER, *Clerk.*

The bond of H. K. Thurber, for the removal of this action to the United States Court, is in words and figures as follows, to wit:

Bond.

Louisville Chancery Court.

W. H. CRUMP, Plaintiff,
vs.
JAMES WILSON, &c., Defendants.

Whereas H. K. Thurber, a defendant in this suit, has
96 herewith presented into the honorable the Louisville chancery court, his petition for the removal of this suit from said Louisville chancery court to the circuit court of the United States foc the district of Kentucky, for trial therein, in accordance with the act of Congress in such cases made and provided.

Now, therefore, we, H. K. Thurber, as principal, and John L. Wheat, as surety, do acknowledge ourselves held and firmly bound unto the plaintiff, W. H. Crump, and to each and every the officers, clerks, marshals, and bailiffs of the Louisville chancery court, and of the circuit court of the United States for the district of Kentucky, and to all persons whatsoever whom it may concern, that the said H. K. Thurber shall and will enter in the said circuit court of the United States for the district of Kentucky, on the first day of its next session, to be holden at Louisville, Ky., a copy of the
97 record in this suit, and that he shall and will pay all costs that may be awarded by the said circuit court, *of* said court shall hold that this suit is wrongfully or improperly rendered thereto; and also that he shall there appear and enter special bail in this suit, if special bail were originally requisite therein. And that the said H. K. Thurber will so do and perform, we bind ourselves, our heirs, and executors, firmly by these presents.

Witness our hands and seals, this 11th day of October, 1881.

[SEAL.] JNO. L. WHEAT.

Acknowledged in open court by J. L. Wheat and approved by the court and ordered to be accepted and filed.

Plaintiff's Deposition.

Louisville Chancery Court.

W. H. CRUMP *vs.* JAMES WILSON.

98 W. H. Crump, plaintiff herein and witness in his own behalf, whose deposition is taken on notice hereto attached, being duly sworn this 12th day of Sept., 1881, Emmet Field and John Barret present, as attorney, deposes and says:

1. W. H. Crump; 48 years; residence, Louisville, Ky.; commission merchant.

In the month of April, 1879, I made a contract with James Wilson to assist him to negotiate for the sale to manufacture olemargerine and other products of animal fat, under what is called the Wege patent; said contract was made in Cincinnati; said Wilson owned said patent for the States of Indiana and Kentucky, and he

desired to sell the right to manufacture under said patent in those States; the terms of the contract entered into were as follows: The said Wilson was to receive $12,000 for the right to manufacture
99 under the said patent in the State of Kentucky, and $8,000 for the right to manufacture in the State of Indiana, and all that he might receive for the right to manufacture in either of said States over and above the stated amounts was to be divided equally between us.

I had been superintendent of the work in Cincinnati for the manufacture for two years, and was familiar with the process and the machinery for making the same. As soon as said contract was made, we went to work to interest men of capital in this city in said —— manufacture under said patent, with the view of disposing of the right to manufacture in accordance with our contract. I advised Mr. Wilson from time to time of the progress ws we were making, and thought we would succeed in disposing of the same. I was then engaged in the sale of these products here in this city, in connection with my business as commission mer-
100 chant, which was a great assistance in the organization of the company for its manufacture, by having its product for exhibition, &c., and by showing a large list of persons to whom sales had been made. I talked to many men of capital here, and showed them the great demand for the product and the cost for manufacturing the same. On one occasion we had a meeting of the butchers connected with the Butchers' Association, with a number of whom I had previously consulted, in regard to the matter. Our efforts to dispose of the patent in this State was successful, and we disposed of the same by organizing a corporation under the laws of the State, styled the Southern Dairy Company of Louisville.

We sold the right for the state of Kentucky to this corporation, at the price of $100,000, said company to issue stock to that amount, $50,000 of which was taken by the incorporation as working
101 capital, at fifty cents on the dollar, and the remainder was issued to James Wilson; in the meantime Wilson sold $10,000 of the stock issued to him at fifty cents on the dollar, receiving them for $5,000, still leaving him in possession of $40,000 worth of said stock; the other stockholders paid in fifty cents on the dollar of their stock as working capital, as agreed on, and the stock issued to Wilson was in payment of the right to manufacture under said patent in this State.

The Southern Dairy Company then proceeded to locate and to erect machinery for the manufacture of said product, I assisting in said location and contracting for and erecting said machinery. After completion of the same, I gave personal superintendence to the manufacture. Mr. Wilson and I then went to Indianapolis to see what could be done there towards disposing of the right of
102 Indiana. We went to the stock yards and other places and made estimates of the amount of fat to be procured there, and endeavored to dispose of the right to parties there. In the meantime the Southern Dairy Company, of Louisville, Ky., its representatives, J. C. Barrett and others, came to Indianapolis, and

we made a sale to them of the said right of Indiana. The terms of the sale were that said company should issue $100,000 of new stock, of which $50,000 was awarded to Wilson as the price of the right for Indiana, the remaining $50,000 was divided among the other stockholders. All of the stock received by Wilson was to be free from calls or assessments of any character.

Ques. Why was all of this stock issued to Wilson and none of it to you?

This was because he was the owner of the right for those
103 two States which he claimed cost him the respective amounts of $12,000 and $18,000 from the United States Dairy Company, of New York. It was not known what the stock he received would sell for. Our bargain was that he was to receive the full amount as aforesaid before I could share with him.

Wilson had never transferred any of the stock to me, nor have I received from him any recompense whatever. I have applied to him repeatedly for a settlement, but he has never complied with my demands. Last time I saw him at the factory I urged on him a settlement, as I feared he might die suddenly in one of the attacks to which he was subject; he remarked that he would have it attended to. Mr. Wilson lives in the city of New York, and since the conversation aforementioned I have written to him several times demanding a settlement, but he has paid no attention to
104 my letters. My anxiety for a settlement arises from the fact that I knew Wilson had been disposing of his stock. I wrote to him once in regard to his selling stock, and his reply was that — had not sold a dollar's worth. The letter marked Exhibit D, dated November 27th, 1873, with petition herein, is the letter received on that occasion from Wilson—the various letters and telegrams filed as exhibits with my petition herein were all received from Wilson. I file herewith and make part of this deposition and marked L two letters and three telegrams received from defendant Wilson.

I received many other letters and telegrams from defendant in regard to this matter, but not supposing I would have any use for them, I destroyed them.

I file herewith, marked Exhibit M, a statement prepared and made by me, a copy of which was used to show to parties the probable profits of the business, thereby to interest them, and in-
105 duce them to go into the enterprise, this is only one of many statements and calculations made by me, and submitted to different parties, while we were trying to sell the rights of Kentucky and Indiana; the stock of the Southern Dairy Company, Louisville, Ky., was worth, when first organized, fifty cents on the dollar; it has steadily increased in value until sales have been made at $1.07 and $1.10, which is to-day's quotations, and its value. Wilson has received more than $20,000 in value for the rights of Kentucky and Indiana aforesaid. Wilson is now indebted to me at least to the amount of $30,000 of the capital stock of the Southern Dairy Company, under our contract. I was to have one-half of all that was realized over $20,000, and three hundred shares of stock in said

company is one-half of what said Wilson received for the rights in said two States, over and above said sum of $20,000, under the contract between Wilson and myself. The stock now standing on
106 the books of the company in his name is a part of the proceeds of sale of said patent, and is mine, he having received and disposed of his half and more. Wilson is insolvent.

Question. Please state whether or not the stock of the said company shows on its face that it is transferable only on the books of the company.

Answer. It does; it recites on its face that it is transferable only on the books of the company.

Please [state] when you first learned that H. K. Thurber claimed this stock.

Answer. On or about the first day of February, 1881. Mr. John G. Barrett, president of the Southern Dairy Company, showed me a letter that he had received from H. K. Thurber, in which Thurber spoke of this suit, and said the stock was his; this was the
107 first intimation I ever had that Thurber claimed the stock.

W. H. CRUMP.

I, A. T. Boulware, deputy commissioner of the Louisville chancery court, certify that the foregoing deposition of W. H. Crump, the plaintiff herein, and witness in his own behalf, was taken, subscribed, and sworn to before me at the time and place, and under the circumstances as stated in the caption. Said deposition was taken on notice, there being present the plaintiff and his attorney, Emmet Field and John Barret. Said deposition was written by me and read to the witness, and signed by him in my presence, he having been first duly sworn.

Witness my hand, this 19th day of September, 1881.

A. T. BOULWARE,
D. Com'r Lou. Ch'y Court.

The exhibits referred to in the foregoing deposition being letters and dispatches, are in words and figures as follows, to wit:

108 *Dispatch.*

CINCINNATI, O., *July* 20, 1879.

To W. H. CRUMP, 135 *Main St.:*

Meet me at Galt House Monday morning at eleven o'clock.

J. WILSON.

Dispatch.

CINCINNATI, O., — 28, 1879.

To W. H. CRUMP,
C'R. CRUMP & SISSON, 135 *Main St., Lou.:*

If Conkling is in Louisville, tell Barret to make no arrangement with him till he hears further from me. Answer to factory.

JAS. WILSON.

Dispatch.

CINCINNATI, O., — 28, 1879.

To W. H. CRUMP, 135 *Main St.:*

When Kreiger gets here, will have a conference with Martin, then will endeavor to have Martin and Myers go down and straighten out.

J. WILSON.

109 *Letter from Wilson to Crump.*

ST. LOUIS, *Oct. 13th*, 1879.

[W. H. CRUMP, Esq.

D'R SIR: I sent you a dispatch to-day, which you doubtless got. The heat here uses me up very much. I am worried about getting this company started; it will take longer time than I expected, and it cannot be rushed, for the product must be made right. Balcum is here, and has had a message from his house; they have discovered, or at least they think they have, that the five tubs are olio; was there any marks on your letter or bill-head to indicate anything about olio. If his house from New York wrote you Balcom does not want you to answer their letters till he gets home; and if they make you a return of account of sales, no matter whether high or low, he does not want any more butter shipped till he answers, and then he will communicate with you direct.

I wish you were over here to keep me. I am alone,
110 and it is hard work. I am satisfied more and more that this is a valuable point to make butter, to meet the wants of the great Southwest country.

I want to see your friend Little, to whom you sent the five tubs; he has sold four of them at 15 cents; he is not the man; he cronks to much; lacks push; but am surprised, with such a heat, he has sold any of them—92, 90, and 94, about the mercury. How is that for October. Louisville is nowhere for heat. Now I am fully satisfied that butter will be high, and this extreme weather is fast turning to grease a large amount of low-grade. If McLehmen wants to cut under, let him cut; he will soon make up and find out how silly it is to attempt to hold the trade of the country with the fat of Cincinnati; and when he can't furnish the sales, they will come to you; besides, you have no extra supply at present in your factory, and cannot have for some time to come.

In haste, y'rs, JAMES WILSON.

111 ST. LOUIS, *Oct. 14th*, 1879.

W. H. CRUMP, Esq.

DEAR SIR: I am in possession of information that show me that Mess. Smith Brothers, of New Orleans, were willing to contract for 25,000 lbs. of oleo. per week. My mind is made up. This is the place to supply that market. I have ordered two churns from New York by telegraph, without delay, so that when I have given the product promised to Louisville, I will be ready to drive things here

in the butter line. Arrange matters to run over here at an early date. I want to see you and lay plans for a large trade. I fear that all, with the exception of Mr. Barret, are to- crampen in their ideas to even drive things on a large scale in Louisville.

In haste, &-., J. WILSON.

Exhibit M, referred to in Crump's deposition, is as follows, to wit:

EXHIBIT "M."

112	260,000, @ 6 c.	15,600 00	
	1 month's rent	133 00	
	Month's labor (20 men)	780 00	
	" fuel	125 00	
	5,200 gals. milk, @ 12½	650 00	
	78,000 lbs. ice, @ 40 c. per 100 lbs.	312 00	
	48 gals. coloring, @ 3.50	148 00	
	7,800 salt, @ 1½ c.	117 00	
	3,200 tubs, holding 15,600 butts, @ 27 c.	864 00	
	3,200 cloths for covering tubs, @ 2	64 00	
	½ c. royalty on 15,600 lbs. butter	780 00	
	Insurance, water, & gas	100 00	
	Office salaries	175 00	
	Incidentals	100 00	
			$19,968 00
	15,600 lbs. butter, @ 15 c.	23,400 00	
	65,000 lbs. stearine, @ 6½ c.	4,225 00	
	10,400 lbs. tallow, @ 5½ c.	572 00	
			28,197 00
	Net profit		$8,229 00
	Stearine & tallow made into candles, @ 8 c.		1,235 00
	75,400–603,200, less 4,797.		$9,464 00

Also the deposition of John D. Taggart.

Depo'n of Taggart.

Louisville Chancery Court.

W. H. CRUMP *vs.* JAMES WILSON, &c.

113 JOHN D. TAGGART, a witness for plaintiff, being first duly sworn by me, at my office, on the 5th day of May, A. D. 1881 at the time specified in the notice, deposes and says:

Please state your name, residence, and occupation.

Answer. John D. Taggart; I reside in Louisville, Ky.; my chief occupation, pork packing.

2nd. Are you interested in any manner in the Southern Dairy Company; if so, in what manner are you interested, and how long have you been so interested?

Answer. I am a stockholder and director in said company, and have been since the first organization of same in this city.

3rd. Are you acquainted with the parties to this suit, W. H. Crump and James Wilson?

Answer. I am.

4th. Please state whether or not W. H. Crump assisted in
114 instructing parties in this city in the process of manufacturing olemargerine and other products of animal fat, under the patent controlled by James Wilson, and the right to use which was purchased by the Southern Dairy Company from Wilson?

Answer. My first knowledge of Mr. Crump and Mr. Wilson, they were in Louisville together. Mr. Crump first came to see me about two houses I owned on 3rd street, between Main and Water; to see if they could be rented for the purposes of an olemargerine factory. I afterwards saw Crump and Wilson together. Mr. Crump was assisting Mr. Wilson in the details of starting said factory in Louisville.

And the witness further answering questions asked him, states:

Mr. Crump assisted in establishing said factory, having a more practical knowledge of the details than anyone else. At a meeting of
115 the board of directors the question as to Mr. Crump's compensation for services came up, and was discussed, the sum agreed upon Mr. Wilson thought was small compensation, and said he would make it all right with Mr. Crump. I don't know whether Mr. Crump had demanded compensation from the company or not. I would not be likely to know about that unless it was discussed by the board. Mr. Wilson didn't say how he intended to make it all right with Mr. Crump. Mr. Crump's visit to me was before the company was organized. Mr. Crump and Mr. Wilson were here for 2 or 3 weeks before the company was organized, talking it up and getting parties interested. They got Mr. John G. Barret and others interested, and they—John G. Barret, &c.,—took all the stock that Mr. Wilson wished to be taken before I became sufficiently interested in it to wish to take stock in it myself. Then Mr. Wilson let me have 100 shares of the stock. I think Mr. Crump and Mr. Wilson jointly selected my houses as the place for said factory.

JOHN D. TAGGART.

116 I, N. R. Wilson, a deputy commissioner of the Louisville chancery court, do certify that the foregoing deposition of John D. Taggart was taken before me, and was read to and subscribed by him in my presence at the time and place and in the action stated in the caption, the said witness having been first duly sworn by me, and his statements reduced to writing by me in his presence, the plaintiff and his attorney being the only persons present.

Given under my hand, this 5th day of May, 1881.

N. R. WILSON,
Dep. Com'r Lou. Ch'y C't.

Also the deposition of John E. Norris.

Dep'on of Norris.

Louisville Chancery Court.

W. H. CRUMP *vs.* JAMES WILSON.

JOHN E. NORRIS, a witness for the plaintiff, was taken, subscribed, and sworn to before me at my office, this 12th day of July,
117 1881, said deposition was taken on notice, the attorney for the plaintiff being present, deposes and says:

What is your name and occupation, and where do you reside?

Answer. My Name is John E. Norris; am stock-trader; reside in Louisville, Ky.

2nd. Are you acquainted with the defendant, James Wilson, and with the plaintiff, W. H. Crump; if you are, how long have you known them?

Answer. I am; have known them for some two years from the time Mr. Wilson organized the Southern Dairy Company.

3rd. Do you know whether or not the plaintiff, Mr. Crump, assisted, the defendant, Wilson, in organizing the Southern Dairy Company, or that he did anything towards assisting Wilson in his effort to dispose of the patent under which the said company manufactures olemargerine?

118 Answer. I know that he assisted Mr. Wilson here in getting the factory into successful operation; I know also, that when I was in St. Louis with Mr. Wilson, he wrote or telegraphed to Mr. Crump at Louisville, Ky., to come to St. Louis; Mr. Crump did come, and was very active during the time, and was there in assisting Mr. Wilson in his efforts to get the factory there in successful operation.

4th. Do you know whether or not Mr. Crump had ever had any experience in manufacturing olemargerine, under the patent controlled by Wilson, before the establishment of the factory here?

Answer. No, I do not, except from hearsay.

5th. Did or not Mr. Crump, after the Southern Dairy Company was established, superintend the working of it until others became familiar with the process?

Answer. I know Mr. Crump worked there when the factory
119 first opened, and they relied considerably on his judgment in perfecting them in the details of the manufactory.

6th. Did you ever have any conversation with Crump and Wilson or with Crump in regard to the making of olemargerine under said patent before the organization of the Southern Dairy Company?

Answer. About the time of the organization, and immediately after I had conversations as to the probability of such manufactory being profitable, both were enthusiastic, and both gave statements showing cost of raw material and manufacturing, and also showing the price said butter would bring when placed upon the market.

7th. Are you one of the directors or connected in any manner with the Southern Dairy Company?

Answer. I was at that time, but am not now.

120 8th. Did you become interested in the Southern Dairy Company after or before the conversations mentioned?

Answer. After.

9th. Did Mr. Crump at any time before you became a stockholder in the Dairy Company show you any olemargerine manufactured under the said patent, or otherwise endeavor to interest you in the process?

Answer. Before I became interested I stopped in at Mr. Crump's store, and there examined the olemargerine. I cannot say that Mr. Crump endeavored to influence me to take stock; he was very enthusiastic, and his statements did have some influence in inducing me to become interested.

10th. Did you ever have any conversation with James Wilson in regard to Mr. Crump's interest in the enterprise; if so, what did he say on that subject.

121 Answer. When I was in St. Louis, I tried hard to find out from Mr. Wilson how Mr. Crump was interested; whether he paid him a salary or whether he was interested with himself in the sale of the patents. I never could find out, as he never told me anything or gave me any satisfaction on that point.

JOHN E. NORRIS.

I, A. T. Boulware, deputy commissioner of the Louisville chancery court, certify that the foregoing deposition of John E. Norris, a witness herein for the plaintiff, was taken, subscribed, and sworn to before me at the time, place, and under the circumstances as stated in the caption. Said deposition was written by me and read to the witness, and signed by him in my presence, he having been first sworn.

Witness my hand, this 19th day of Sept., 1881.

COMMONWEALTH OF KENTUCKY, *Louisville Chancery Court:*

122 I, John H. Weller, clerk of the court aforesaid, do certify that the foregoing 121 pages, this included, contain a true and full transcript of all the proceedings, including orders, pleadings, exhibits, and depositions, had in the action of W. H. Crump against James Wilson and others, No. 35614, in the caption mentioned.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office, this 15 day of October, 1881.

[SEAL.] JNO. H. WELLER,
Clk Lou. Ch'y Ct.

COMMONWEALTH OF KENTUCKY, *Louisville Chancery Court:*

I, I. W. Edwards, chancellor of the court aforesaid, do certify that John H. Weller is clerk of the Louisville chancery court, duly elected and qualified, and that his signature to the foregoing certificate is genuine, and said certificate is in due form of law.

123, 124 Given under my hand, this 15th day of October, 1881.

I. W. EDWARDS,
Chancellor.

COMMONWEALTH OF KENTUCKY, *Louisville Chancery Court:*

I, John H. Weller, clerk of the court aforesaid, do certify that I. W. Edwards is chancellor of the Louisville chancery court, duly elected and qualified, and that his signature to the foregoing certificate is genuine, and said certificate is in due form of law.

Given under my hand, this 15th day of October, 1881.

JNO. H. WELLER,
Clk Lou. Ch'y C't.

125 The answer of H. K. Thurber, above referred to, is as follows:

Answer of H. K. Thurber.

In the Circuit Court of the U. S. for the District of Ky.

W. H. CRUMP, Comp't, *vs.* JAMES WILSON, &c., Def'ts.

126 The defendant, H. K. Thurber, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bills of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant, answering, saith:

That on the 26th day of October, 1880, or a short time theretofore, he did, for value by him paid, purchase from James Wilson, the principal defendant herein, two hundred and fifty (250) shares of the capital stock of the defendant, The Southern Dairy Company of Louisville; each of said shares of stock then was, and now is, of the par value of $100.00. The said shares of stock were and are evidenced by three (3) several certificates issued by said corporation,

127 The Southern Dairy Company of Louisville, each signed by J. G. Barret, the president, and by George T. Wood, the secretary, of said corporation, each sealed with the separate seal of said corporation, and each dated 13th January, 1880. The said certificates were and are severally numbered 39, 40, and 53.

Number 39 is for one hundred (100) shares; number 40 is for one hundred (200) shares, and number 53 is for fifty (50) shares.

Each of said certificates certifies that James Wilson (who is the defendant James Wilson herein) is entitled to the said several numbers of shares of the capital stock of said defendant corporation, The Southern Dairy Company of Louisville, "transferable only on the books of the company, or by attorney, or surrender of the certificate."

And upon the back of each of the said certificates was and is a printed form for the sale and transfer of the shares of stock thereby evidenced, which form was adopted and issued by the defendant,

The Southern Dairy Company of Louisville, and is in words
128 and figures as follows, to wit:

"For value received —— hereby constitute and appoint, irrevocably, —— attorney, to transfer to himself or other persons the whole or any part of the within-named shares of the stock of The Southern Dairy Company.

"Witness — hand and seal, this — day of ——, 18—.

[SEAL.] "—— ——.

"Sealed and delivered in the presence of—

"—— ——."

And all transfers and assignments of shares of the capital stock of defendant, The Southern Dairy Company of Louisville, are, and have ever been since the organization of said corporation, made upon and by said form; and upon the filling up the blanks as to date, and the signature by the person named in the body of the certificate, and the attestation of his signature by a witness thereto, the shares of stock specified in such certificate do pass, and
129 ever have passed, upon the delivery of the certificate, to and vest in and belong to the person so holding and owning it after such endorsement and delivery, and it being so endorsed and delivered do pass to and become the property of other and subsequent purchasers.

This defendant says that in making sales and assignments of such stock it is not — has it ever been usual to fill up the blanks with the name of the attorney in fact or transferee, but it is customary and usual to leave said name blank, and it is always and ever has been the right of any purchaser and *bona fide* holder of such endorsed certificate to fill up the said blank with his own name at any time he may choose so to do, and to present the certificates and demand and have from the Southern Dairy Company of Louisville other certificate or certificates in lieu of those so endorsed, surrendering up the said endorsed certificates, and the new issue of certificates being in his own name, or such name as
130 he may direct.

And such rule, right, and custom has prevailed, and prevails not only in and with the defendant corporation, The Southern Dairy Company of Louisville, but is and always has been usual and general with all stock companies.

No other or different mode is or has been used or practiced by the defendant, The Southern Dairy Company of Louisville. The defendant says that by his said purchase from and payment to defendant, James Wilson, aforesaid, he became entitled to receive from said James Wilson the shares of stock aforementioned, and the three aforesaid certificates evidencing them, duly endorsed, as aforesaid, by said defendant, James Wilson.

And thereupon, on the 26th day of October, 1880, the defendant, James Wilson, did write his name upon the back of each, the hereinbefore-described certificates, at the foot of its aforementioned
131 form of transfer and assignment and power therefor, and did

deliver each, the said certificates, to this defendant, in the presence of one S. E. Sanford, who, at the request of the def't, James Wilson, witnessed such signatures and delivery. For the said certificates of stock and the two hundred and fifty (250) shares of capital stock by them evidenced, this defendant paid value to defendant, James Wilson, and so became and was on the 26th October, 1880, and ever since has been and know is, the holder and owner of each, the said three certificates of stock, and of each and all the two hundred and fifty (250) shares of capital stock of the defendant, The Southern Dairy Company of Louisville, evidenced thereby.

And defendant further says that he is entitled to fill his name in the blanks left in the endorsements for name of transferee, as aforesaid, and to have issued to him by the defendant, The Southern Dairy Company of Louisville, other certificate or certificates

132 in his own name for the full quantity of 250 shares of its capital stock.

Defendant files and makes part hereof each of the three certificates of stock, hereinbefore described, and makes the endorsements upon each a part of this his answer.

The defendant has no knowledge whatever nor any information as to or concerning the alleged contracts or dealings between complainant, W. H. Crump, and def't, James Wilson. He does not know, nor has he any information or means of knowing, whether the defendant, James Wilson, at the time of the institution of this suit, or at any time before or since that date, was or has been or now is indebted to the complainant W. H. Crump, in any sum whatever, or upon any account, or bound to deliver any shares of stock of any corporation whatever to complainant, W. H. Crump, and he therefore denies the fact so to be.

133 This defendant bought from def't, James Wilson, the shares of stock aforementioned, and received the certificates aforesaid, in good faith and for value, and without any knowledge, information, or suspicion of any claim or demand of any sort on complainant Crump's part against said Wilson.

He does not now remember when it was that he first advised the defendant, The Southern Dairy Company of Louisville, that he held the 250 shares of its stock.

He denies that he was bound in law or equity or in morals, or by any commercial usage, to notify said corporation that he had bought some of its stock.

He denies that the certificates of stock by him bought and received from defendant, James Wilson, did on their face, or at all, give him notice that the stock was transferable only on the books of the defendant corporation.

He says that all the certificates of stock and the stock therein mentioned passed by endorsement and delivery of the certificate as aforesaid.

134 It is not true, and defendant denies the fact to be, that he paid nothing for such stock. He paid its then full value. It is not true, and this defendant denies, that transfer and delivery of

the stocks has never been made to him, or made to him after the 26th October, 1880, or after the institution of this suit.

The said stock was transferred, assigned, and delivered to him as aforesaid on 26th October, 1880, and not at any later date, and in good faith and in usual course of trade and for value.

And defendant says that neither the complainant, W. H. Crump, nor the defendant, James Wilson, is entitled to the said 250 shares of stock, or any one or more of said shares, or any part of any, and that neither of them is entitled to claim any right or interest therein, but that the whole is the unencumbered property of the Southern Dairy Company, defendant herein; that it received from him
135 the said certificates of stock and retain and cancel them, and issue to this defendant other shares of stock in his own name for two hundred and fifty (250) shares of its capital stock; but said corporation alleges that it is impleaded in this suit and cannot safely do so, and refuses to do so.

Wherefore defendant prays that the said 250 shares of stock be decreed to be the property of this defendant, and that the petition and amended petition and other complaint of complainant, W. H. Crump, be dismissed, so far as is sought or prayed by any such pleadings or suit to affect or subject any — the said stock, and that complainant, W. H. Crump, be decreed to have no legal or equitable right or interest therein or lien or claim thereupon.

And further, that the defendant, The Southern Dairy Company of Louisville, be decreed and ordered to receive and cancel the
136 three (3) certificates of stock for 250 shares of stock, hereinbefore described and filed herewith, and to issue to this defendant in lieu thereof other certificates for the full amount of two hundred and fifty shares of its capital stock properly signed and sealed.

He prays further for judgment, that he recover his costs herein against the complainant, W. H. Crump, and for all such other relief as in equity and good conscience he may be entitled to.

BARRET & BROWN,
For H. K. Thurber.

H. K. Thurber says that the statements contained in the foregoing answer are true, so far as they are stated upon his own knowledge or purport to be so stated, and so far as stated upon information he verily believes them to be true.

Witness his hand, at New York city, N. Y., this 19th day of October, 1881.

HORACE K. THURBER.

Subscribed and sworn to by H. K. Thurber, to me personal-
137 ally known, before me, this 19th day of October, 1881.

[SEAL.] JOHN A. OSBORNE,
United States Commissioner, South'n D. of N. Y.

The replication of W. H. Crump above referred to is as follows, to wit:

Replication of W. H. Crump to Ans. of H. K. Thurber.

In the Circuit Court of the United States for the District of Kentucky.

W. H. CRUMP *vs.* JAMES WILSON, &c.

This repliant, W. H. Crump, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer of *of* the defendant, H. K. Thurber, to this complainant's bill, for replication thereto, saith: He will aver and prove his said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this re-
138 pliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

EMMET FIELD,
For W. H. Crump.

The cross-bill of H. K. Thurber, above referred to, is as follows, to wit:

Cross-Bill of H. K. Thurber.

In the Circuit Court of the U. S. for the District of Kentucky.

W. H. CRUMP *vs.* JAMES WILSON, &c.

This defendant, H. K. Thurber, by leave of the court, now comes and files this his cross-bill of complaint herein against his co-
139 defendant, The Southern Dairy Company of Louisville, Ky., and thereupon he says: That this defendant is a citizen of the State of New York, and the said defendant, The Southern Dairy Company of Louisville, is a corporation created, organized, and existing under and by force of the laws of the State of Kentucky, with its chief office and place of business in said State, and that it is a citizen of said State of Kentucky.

And further, he says that he is the holder and owner of three (3) several certificates of the capital stock of said defendant corporation, to wit: Certificates Nos. 39, 40, and 53; certificate No. 39 is for 100 shares; No. 40 is for 100 shares, and No. 53 is for 50 shares, being an aggregate of 250 shares, and each and all the said 250 shares of stock belong to this defendant and cross-complainant.

Each — the said certificates of stock were issued and delivered by said defendant corporation to one James Wilson, who is a de-
140 fendant to the original bill of complaint herein, and he was the holder and owner of said certificates and of the shares of capital stock evidenced thereby.

This defendant did purchase on or about the 26th October, 1880, from said James Wilson, each and all the said certificates of stock and the shares of capital stock evidenced thereby, and said Wilson

endorsed each of said certificates with his own name and signature, and with words of transfer and power to transfer the same in the form and manner adopted and prescribed by the defendant corporation, and did deliver said certificates and each of them so endorsed to this defendant and cross-complainant, who paid him value therefor, and who thereby become, on the 26th Octo., 1880, and has since been and now is, the true owner thereof.

The said certificates of stock are on file in this suit as ex-
141 hibits with and parts of the answer of this defendant to the complaint of the complainant, W. H. Crump.

He refers to the same and makes each the same and all the endorsements on each parts of this his cross-bill, and prays the court to consider the same.

He says that he is entitled have said certificates of stock taken up and cancelled by the defendant, The Southern Dairy Company of Louisville, and new certificates, in lieu of those now held, issued to him, in his own name, for the full amount of 250 shares of the capital stock of said corporation unincumbered and free from any and all liens or claims.

He has heretofore demanded of the defendant, The Southern Dairy Company of Louisville, that it do receive, take up, and cancel the said three (3) certificates of stock held and owned by this defendant, and that it issue and deliver to him other certificates for 250 shares of its capital stock, in his own name, properly signed,
142 sealed, and recorded upon its books.

But said defendant, The Southern Dairy Company of Louisville, refuses so to do, aver-ing that it cannot safely so do because of its petition and complaint of complainant, W. H. Crump, herein, and because of the attachment herein.

Wherefore this defandant prays for judgment against the defendant, The Southern Dairy Company of Louisville, that it do receive and cancel the aforesaid three (3) certificates of stock, with this defendant's answer to the original bill of complaint or petition of complainant, W. H. Crump, filed, and that it do, in lieu and stead thereof, issue & deliver to this defendant other certificates in his own name for 250 shares of its capital stock, properly signed and sealed, and recorded in its books, and free of lien.

He prays for his costs, and for all proper relief.

BARRET & BROWN,
For H. K. Thurber.

143 The answer of The Southern Dairy Company to said cross-bill, above referred to, is as follows, to wit:

Answer of Southern Dairy Co. to Cross-Bill of H. K. Thurber.

In the Circuit Court of the U. S. for the district of Kentucky.

W. H. CRUMP *vs.* JAMES WILSON *et al.*

This defendant, The Southern Dairy Company of Louisville, saving and excepting to all manner of imperfection in the cross-bill of complaint of defendant, H. K. Thurber, herein, for answer says:

That it is a mere stakeholder as between the parties to this suit, and is ready to do and perform any and all judgments of the court, but prays for full advice and protection.

It has no knowledge as to the circumstances under which the defendant, H. K. Thurber, purchased the stock from defendant Wilson, nor any information whatever other than the statements of the defendant Thurber, in substance those set forth in his cross-
144 bill, and the statements of def't James Wilson, which agree therewith. It disclaims all ownership to or rights in or to the said stock, and prays for instruction and proper judgments, binding and conclusive upon all the parties, and protecting this def't.

It prays for costs and all proper relief.

BARRET & BROWN,
For Southern Dairy Co. of Louisville.

The replication of H. K. Thurber, above referred to, is as follows:

Replication of Thurber to Ans. of Southern Dairy Co.

In the Circuit Court of the U. S. for the District of Ky.

W. H. CRUMP *vs.* JAMES WILSON, &c.

This repliant, H. K. Thurber, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer of defendant, The Southern Dairy
145 Company, to the cross-bill of this repliant for replications thereto, saith that he will well aver and prove his said cross-bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said cross-bill he has already prayed.

BARRET & BROWN,
For H. K. Thurber.

Order.

And at the February term, 1882, of said court, to wit, on Wednesday, March 1st, 1882, came the complainant, by Emmet Field,
146 his counsel, and filed his amended bill herein. Came also the defendant H. K. Thurber, by Barret & Brown, his counsel, and filed his answer to said amended bill, and the complainant, by his counsel, filed his replication to said answer.

The amended bill, above referred to, is as follows:

Amended Bill of Pl'ff.

In the Circuit Court of the United States for the District of Kentucky.

W. H. CRUMP Pl'ff, *vs.* JAMES WILSON, &c., Def't.

The complainant, W. H. Crump, by leave of court, amends his bill herein, and says the pretended transfer of the certificates of stock of The Southern Dairy Company of Louisville, mentioned in the answer of the defendant, H. K. Thurber, herein, was made by the said Wilson, and accepted by the said Thurber, for the fraudulent purpose of protecting the said stock for said Wilson. He
147 says the said certificates are held in secret trust by the said Thurber for the said Wilson. Wherefore he prays as in his original and amended bills, or petitions, herein, and for all other proper relief.

EMMET FIELD,
For Complainant.

The answer of H. K. Thurber, above referred to, is, as follows:

Answer of H. K. Thurber to Compl's Amended Bill.

In the Circuit Court of the U. S. for the District of Kentucky, at Louisville.

W. H. CRUMP, Compl., *vs.* JAMES WILSON *et al.*, Def'ts.

The defendant, H. K. Thurber, for answer to the amended bill of complaint of complainant, saving and reserving all and every his objections and exceptions thereto, and to the many and manifest imperfections and insufficiencies thereof, and not waiving the same, for answer saith:

It is not true, and he denies the fact to be, that the transfer
148 of the certificates of stock of The Southern Dairy Company of Louisville, from def't, James Wilson, to this defendant, was pretended, or unreal, or fraudulent, in any respect or particular.

He denies that the transfer of said certificates of stock, or of any of them, was made by defendant Wilson, or accepted by this defendant, for the purpose of protecting the said stock, or any part of it, or any interest in it for said Wilson.

He denies that said certificates, or any of them, or any right, claim, or interest in any is held in secret, or other trust, by this defendant for defendant Wilson, or upon any understanding, agreement, or arrangement whatever.

This defendant again asserts and declares that the purchase of said stock was by him made in good faith, and for the full value by him paid, and in the usual and ordinary course of business.

He denies that he committed or intended to commit, or was a party to any fraud of any kind, or that any fraud was or has
149 been committed, practiced, or intended.

Wherefore he prays to be hence dismissed with his costs herein most unjustly incurred.

BARRET & BROWN,
For H. K Thurber.

H. K. Thurber on his oath says: That he is the defendant herein, and that the statements, allegations, and denials contained in the foregoing answer are true, as he knows from his personal knowledge.

HORACE K. THURBER.

CITY & COUNTY OF NEW YORK, *s't:*

Subscribed and sworn to by H. K. Thurber, to me personally well known, this 8th day of February, 1882, in the city of New York, in the State of New York, before me, a notary public in and for city & county aforesaid.

Witness my hand, and seal of office, the day and date last aforesaid.

[SEAL.]

ALEX. WILEY,
Notary Public, N Y Co.

150 The replication above referred to is as follows:

Replication to Answer to Amended Bill.

In the Circuit Court of the United States for the District of Kentucky.

W. H. CRUMP *vs.* JAMES WILSON, &c.

The repliant, waiving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer to the amended bill herein, for replication thereunto, saith, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant.

Without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver
151 and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

EMMET FIELD,
For Complainant.

Order, Judg't, &c., & Opinion Filed.

And on another day of said February term, 1882, to wit, on Tuesday, May 2nd, 1882, this cause coming on to be heard upon the bill of complaint, answer, and replication, as also the several amended bills, cross-bills, answers, and replications, as also upon the exhibits filed and the proof taken, and argument of counsel being heard; and the court being advised, it is now considered, decreed, and adjudged that the bill of complaint of the complainant, W. H. Crump, be, and the same is hereby, dismissed.

Ann further, it is considered and adjudged that the defendant and cross-complainant, H. K. Thurber, is the true owner of the two hundred and fifty shares of the capital stock of the Southern Dairy

Company of Louisville, standing on the books of the said
152 corporation in the name of James Wilson, and that said H. K. Thurber is entitled to have said certificate retired and cancelled by said corporation, and other certificates issued in lieu thereof on his application; and the defendant, The Southern Dairy Company of Louisville, is adjudged so to cancel the certificates, and issue and deliver to cross-plaintiff, H. K. Thurber, or his order, such new certificates.

Further, it is considered that the defendant and cross-complainant, H. K. Thurber, and the defendant, The Southern Dairy Company of Louisville, do recover of the complainant, W. H. Crump, their costs herein expended, and may have execution of the same.

Thereupon the complainant prayed an appeal to the Supreme Court of the United States, which is granted.

The court delivered a written opinion, which is as follows:

W. H. CRUMP *vs.* JAMES WILSON *et al.*

153 The complainant filed his petition in the Louisville chancery court on the 26th November, 1880, in which he alleged that he and defendant Wilson made a parol contract, by which he agreed to aid and assist Wilson in selling the right to manufacture in the States of Kentucky and Indiana animal fats, for the purposes of food in the form of butter, &c. This right was secured by a patent which was owned by Wilson, and the agreement was that Wilson was to receive $12,000 for the right to manufacture under his patent for the State of Kentucky, and $8,000 for the right to manufacture for the State of Indiana, and "that all he (Wilson) might receive for either State above the amount for which that State was sold was to be divided equally between said Wilson and himself." The bill alleged that he did aid and materially assist in the sale of the patent-right, and that Wilson, with his assistance,
154 succeeded in selling the patent-right for both States; that he received for the patent for Kentucky five hundred shares of stock in the Southern Dairy Company, each share being for $100.00, and for the patent in and for the State of Indiana the same amount of the same stock.

That Wilson sold, before the certificate of stock was issued to him, one hundred shares of said stock at fifty cents on the dollar, and received therefor the sum of $3,000, and that the one hundred shares thus sold were issued to the purchaser. This was stock received for the patent-right for Kentucky, and that a certificate of stock was issued to him for the other four hundred shares.

He alleges that the Southern Dairy Company, after its organization, purchased of Wilson this patent in and for the State of Indiana, and issued therefor one thousand shares of stock, but that it was part of the agreement of purchase that one-half of this
155 stock was to be divided between the members of the Dairy Company, and that this was done, thus leaving five hundred shares to Wilson for his patent for said State. The certificate of stock for this, as well as that received for Kentucky, were issued to Wilson, who has been selling the same from time to time; that the

stock was originally worth fifty cents on the dollar, and that Wilson has realized much more than $12,000 from the stock issued to him for the Kentucky purchase, and much more than $8,000 from the stock issued to him for the Indiana purchase. The complainant then makes this allegation: "But notwithstanding the contract between the said Wilson and himself, that they were to share equally in the value realized, after deducting $12,000 as the price of the right to the State of Kentucky, and $8,000 as the price of the right to the State of Indiana, as aforesaid, the said Wilson has failed and refused, and still fails and refuses, to give him any part of
156 the said stock, and to give him any part of the sum for which he has sold such parts of said stock as he has disposed of, although plaintiff has often demanded his part of the same, and the said Wilson has fraudulently converted all of the said stock and all of said money to his own use. * * *

"He says that a large amount of the stock issued to the defendant Wilson, as aforesaid, still remains upon the books of the said corporation in the name of the said Wilson, and is held by him. He says that under his contract with said Wilson he is entitled to and is the owner of one-half of the stock which said Wilson received for the right to use said patent in the States of Kentucky and Indiana as aforesaid, and that one-half thereof, after deducting the said $20,000 worth, as the amount Wilson was to receive before plaintiff's enterest in the proceeds commenced, is $30,000 worth, or three hundred shares."

157 The complainant alleges that Wilson is a non-resident of the State, and a resident of the State and city of New York, and then prays "that he be adjudged to be the owner of three hundred shares of the said stock. He further prays that the defendant, The Southern Dairy Company of Louisville, be ordered and compelled to cancel the stock now standing upon its books in the name of said Wilson to that number and extent, and that the said company be ordered and compelled to issue to plaintiff certificates for the said number of shares of stock in said company, the same to be forever free from any charge or assessment by the company; or, if the said Wilson has not retained as much of said stock as belonged to plaintiff, he prays judgment against him for a sufficient sum to cover the deficiency."

A warning order was entered against Wilson, and subse-
158 quently a copy of the bill was served on him (Wilson) in the city of New York. Wilson, however, has never answered or appeared in the case.

Complainant filed amended bill, in which he alleged that there was at least two hundred and fifty shares of the Southern Dairy stock standing in Wilson's name, and that the stock was worth par, instead of fifty cents on the dollar, and prayed that the Southern Dairy Company, who had been summoned on the original bill, should be compelled to answer.

The Dairy Company filed an answer Feb'y 4th, 1881, in which it states, among other things, that there remains on its stock-book, in the name of said Wilson, two hundred and fifty shares of its stock,

but that the company had been informed that said stock was, on the 26th of October, 1880, sold to H. K. Thurber, a resident of
159 New York city, and that the certificates were on that day transferred to him by Wilson, and that Thurber had demanded a transfer of the stock, but the stock still remained in the name of Wilson, and that said company is willing to obey the order of the court in regard to said stock.

The complainant filed an amended bill, in which he alleged that said Thurber had never paid any value for said stock, and that the transfer of the certificates had never been made to him, or, if it had, it was done after the institution of his suit; and also alleged the Dairy Company had not been notified of said transfer until about the 1st of February, 1881. He made said Thurber a defendant, and had a warning order entered against him, and subsequently had a copy of the bill delivered to him in New York city.

Thurber entered his appearance in the Louisville chancery court, and on his petition the cause was transferred to this court.
160 He has filed an answer and also a cross-bill in this court, in which he claims to have purchased this stock (two hundred and fifty shares), in the city of New York, for value, on the 26th of October, 1880, in good faith, and without any knowledge, intimation, or suspicion of complainant's alleged claim or interest. He says that the certificates of stock were delivered to him by Wilson at the time of the purchase, endorsed by him on the back thereof with an irrevocable power of attorney.

The certificates of stock are filed, and have on them the endorsements of Wilson, under the printed forms prescribed by the Dairy Company, and are still in blank as to the name of the transferee.

The cross-bill seeks to establish his claim to this stock, and for new certificates of stock to be issued to him by the company.

The testimony taken by complainant proves that he did
161 aid and assist Wilson in selling this patent for the States of Kentucky and Indiana, and that all of the stock in payment for this patent right was issued to Wilson. There is no proof as to the contract between complainant and Wilson, except his own testimony. He thus states the contract in his deposition:

"In the month of April, 1879, I made a contract with said Wilson to assist him to negotiate the sale of the right to manufacture olemargerine and other products of animal fat, under which is called the 'Marge patent.' The said contract was made in Cincinnati, Ohio. The defendant Wilson owned said patent for the States of Indiana and Kentucky, and he desired to sell the right to manufacture under said patent in those States. The terms of the contract we entered into were as follows: The def't Wilson was to receive $12,000 for the right to manufacture under said patent for the State of Kentucky, and $8,000 for the right of Indiana, and all
162 that he might receive for the right to manufacture in either of said States over and above said stated amounts was to be divided equally between us."

The cross-complainant's, Thurber's, testimony proves that he purchased this stock about October 26th, 1880, paying therefor $15,000,

and that he had at the time neither knowledge or notice of complainant's claim, and that the certificates of stock were then endorsed by Wilson and delivered to him. He says he purchased this stock after consulting with Mr. Barret, president of the Dairy Company. It appears that he did not ask to have this stock transferred to him until about the 1st of February, 1881, but this delay is not unusual.

The circumstance that Mr. Thurber could not positively say upon cross-examination whether he paid the $15,000 in money or by a check is suspicious, but it is not of itself sufficient to destroy
163 his direct and unqualified statement that he purchased this stock and paid therefor $15,000.

These being the facts, the question arises, Who is entitled to this stock?

If Thurber had not entered his appearance and brought into court the certificates of stock, it would have been a serious question whether this court could have proceeded to adjudicate between complainant and Wilson. Kilgore *vs.* The New Orleans Gas Light Co., 2 Wood, 144; Pennoyer *vs.* Neff, 95 U. S. R., 714; Insurance Co. *vs.* Bangs, 103 U. S. R., 436.

But as the certificates of stock and the holder thereof, as well as the corporation itself, is before the court, and Wilson has been served with a copy of the petition, under section 56 of the Code of Practice, before the case was removed, I think this court has jurisdiction to determine the rights of the parties to this stock—see 738 R. Statutes, and act approved Mar. 3d, 1875—although it certainly
164 has no right to give a personal judgment against Wilson.

The complainant's bill, if I understand it, seeks a specific performance of a parol contract, and notwithstanding this stock was issued to and stands on the books of the Dairy Company in the name of Wilson, and was by him sold to Thurber for a valuable consideration without notice to him of complainant's claim, and the certificates of stock endorsed and delivered before complainant filed his bill, it is insisted by the learned counsel that complainant is entitled to the stock as against both Wilson and Thurber.

The Southern Dairy Company was organized under General Statutes of this State, chapter 56; and the 11th section of this chapter provides as follows:

"Transfers of stock shall not be valid, except as between the parties thereto, until the same are regularly entered upon the
165 books of the company, so as to show the name of the person by whom and to whom the transfer is made, the number or other designation of the shares, and the date of the transfer. The books of the company shall be so kept as to show intelligibly the original stockholders, their respective interests, the amount which has been paid thereon, and all transfers thereof. And such books or correct copies thereof, so far as they relate to the items mentioned in this section, shall be subject at all times to the inspection of any stockholders desiring the same."

It is insisted that, although the transfer of these certificates by Wilson to Thurber may have been in good faith and for value, the

stock not having been transferred on the books of the company in obedience to the statute, Thurber acquired title against Wilson only, and no one else.

The learned counsel concedes that ordinarily, that when the
166 charter or by-laws of a corporation requires stock to be transferred on the books of the company, such provisions are for the benefit of the corporation alone; but he insists that when a general statute prescribes the manner in which stock is to be transferred, a purchaser cannot acquire title as against the creditors of the vendors, unless the transfer is consum-ated in the manner directed by the statute before creditors acquire rights against the stock.

It is undoubtedly true that a State which incorporates or authorizes the incorporation of a company, may prescribe the mode by which its stock is to be transferred, and may make that mode exclusive. When the mode is prescribed by the laws of the State, be it in a charter or general law, authorizing incorporations to be formed, whether such mode is exclusive, is a question of legislative
167 intent, and depends upon a proper construction of the act.

Before considering the construction which should be given section 11, chapter 56, we should determine complainant's relation to this stock.

The contract contemplated the issuing of this stock in the name of Wilson, and it is fair to infer from the evidence this was done with his knowledge and consent. There is no evidence tending to prove that Wilson recognized Crump's right to any of this stock after it was issued.

His rights, as far as this record shows, depends entirely upon the contract made before the Dairy Company was organized. He says that contract was that "Wilson was to receive $12,000 for the right of Kentucky, and $8,000 for the right of Indiana, and all that he might receive for the right to manufacture in either of said States over and above said stated amounts was to be equally divided
168 between us." It will be observed that this contract does not provide in terms for a division in kind of that which was to be obtained for those patent rights. It clearly contemplated the receipt of the $12,000 & $8,000 in money. The words "all that he might receive * * * above the stated amounts was to be equally divided between us" would indicate a division of money, rather than a division of the property which might be received, if property and not money should be received.

If this be the proper construction of the contract, then Wilson had authority to sell all of the stock, and would be accountable to complainant for one-half of the proceeds, after paying himself $20,000.

Complainant does not claim that he owns by agreement or arrangement with Wilson the particular stock represented by the certificates held by Thurber, but his bill is in the nature of one
169 seeking a specific performance. This is asked because Wilson has already received, as it is alleged, $20,000 in money, and disposed of more than his half of the remaining stock. The alle-

gation is made that Wilson is a non-resident and insolvent, and will dispose of the remaining stock in fraud of complainant's rights.

This bill, however, is not filed until after Thurber had become a *bona fide* purchaser of the stock, and complainant has not, by attachment or otherwise, obtained a lien on this stock.

The utmost he can claim is that he has a *lis pendens* as to Thurber from the time he became a party to the suit; but as all of his rights were acquired before this, they cannot be lessened or complainant's rights increased by this *lis pendens*.

If it be conceded that the mode presented by Sec. 11, chap. 56, for a transfer of stock, and that this mode is the only one by
170 which a complete transfer could be made, yet by the terms of the section this transfer from Wilson to Thurber was good between themselves, and passed all of Wilson['s] interest; a third party cannot prevent a legal and complete transfer of the stock on the books of the company, unless such third party has some interest in or lien upon this particular stock. This the complainant has not and cannot have, unless this court grants relief in the nature of specific performance.

In view of the fact that Thurber is a *bona fide* purchaser, for value, before the institution of this suit, and the nature and ambiguity of the contract between complainant and Wilson, which is sought to be specifically enforced, I think Thurber has the better equity, and the contract should not be specifically enforced as against him.

If, however, complainant had acquired a lien on this stock,
171 by the levy of an attachment, I am inclined to the opinion that Thurber would have the better right. The Kentucky court of appeals has not construed this section, and there is a irreconcilable conflict in the decisions of the State courts that have construed similar statutes.

The Wisconsin court, in construing a statute very similar to this one, use this very explicit language:

"We think the true meaning of the language is, and the obvious intention of the Legislature in using it was, that all transfers should be entered as here required on the books of the corporation. And it is equally clear to us that all transfers of shares not so entered are invalid as to attaching or execution creditors of the assignor, as well as to the corporation and subsequent purchasers in good faith, and, indeed, as to all persons' interest, except the parties to such transfers.

172 "All transfers not so entered on the books of the corporation are absolutely void, not because they are without notice or fraudulent in law or fact, but because they are made so by the statute."

Application of Murphy, 51 Wis., 522.

The supreme courts of California, Main-, and Connecticut have similar decisions, though they do not use language quite so broad.

Chief Justice Shaw, in construing the meaning of a provision of the Essex Bank charter, which provided that the stock of said bank should be transferred only at its banking-house and on its books,

says: "It would seem to us to be going beyond the rules of just exposition to hold that a plain provision of a statute law, calculated to promote the security of important legal rights in important particulars, should be construed to be a regulation made for the convenience and protection of the banks. The clause itself is too
173 clear to admit of doubt. * * * The word *only* carries an implication as strong as negatived words could make it, that is, in no other mode having no others unaffected, it made the mode exclusive." Fisher *vs.* Essex Bank, 5 Gray, 373.

These extracts from the opinions show how clear and distinct those courts are upon this question; yet the contrary view is sustained by an equal array of authority.

In the case U. S. *vs.* Vaughan, 3 Binney, 394, the Pennsylvania court decided, after an able and exhaustive argument, that stock of the Bank of the United States, which had been sold *bona fide*, and the certificate delivered to the purchaser with a power of attorney to transfer it on the books of the bank, is not liable to an attachment as the property of the vendor, although it was standing in his name on books of the bank at the time of the attachment.
174 In that case, the charter of the United States Bank provided that "the stock of said corporation shall be assignable and transferable according to such rules as shall be instituted in that behalf by the laws and ordinances of the same." And by a by-law of the corporation, the stock was made transferable only at the bank on its books by the proprietor personally or his attorney.

The New York courts have construed a statute of that State, which is similar in its provision on this subject to the California statute, to admit of an equitable assignment and transfer of the stock in a corporation without its being entered on the corporation books. In other words, that the provision was intended for the benefit of the corporation and its creditors, and not for the creditors of the stockholders. Johnson *vs.* Underhill, 52 New York, 208.

The language of the New York statute is more explicitly
175 negative in its terms than the Kentucky statute.

The question was most elaborately discussed in the Schuyler fraud cases, and the New York court, in N. Y. & N. H. R. R. Co., Schuyler, 34 N. Y., 30, lays this down as the law.

Judge Davis, speaking for the court, uses this language:

"The law, as settled by authority, touching the first of these questions, is this: Where the stock of a corporation is, by the terms of its charter or by-laws, transferable only on its books, the purchaser who receives a certificate with power of attorney gets the entire title, legal and equitable, as between himself and his seller, with all the rights the latter possessed; but as between himself and the corporation he acquires only an equitable title, which they are bound to recognize and permit to be ripened into a legal title, when he presents himself, before an effective transfer on the books has been made,
176 to do the acts required by the charter or by-laws, in order to make a transfer.

"Until these acts are done he is not a stockholder, and has no claim to act as such, but possesses, as between himself and the cor-

poration, by virtue of the certificate and power, the right to make himself, or whomever he chooses, by the presented transfer.

"The stock not having passed by the delivery of the certificate and power of attorney, the legal title remains in the seller, so far as affects the company and subsequent *bona fide* purchasers who take by transfer duly made on the books."

The New Jersey courts have followed the Pennsylvania and New York courts. See Broadway Bank *vs.* McElrath, 2 Beasley, 24; Huntenden *vs.* Nassau Bank, 2 C. E. Green, 496.

In the case of the U. S. *vs.* Cutts, 1 Sumner, 141, a contest arose between the United States, who claimed a priority for its debt
177 against a deceased debtor in the proceeds of U. S. stocks, which had been pledged to a third party by the decedent to secure a loan. The stock had been endorsed with a power of attorney, but never transferred on the books of the treasury. Judge Story, in a well considered opinion, refused the priority claimed for the United States. There was no attaching creditor in that case, but the reasoning of Judge Story covers this question in so far as it clearly recognizes an equitable transfer of the stock to have been made by the delivery and endorsement, with power of attorney, without a transfer on the books having been made.

In Black, &c., *vs.* Zacharie & Co., 3 Howard, 494, the Supreme Court decided a provision in the charter of a corporation, that transfers of its stock shall be made only on its books, is for the benefit of the corporation and *bona fide* purchasers, and that third parties cannot take advantage thereof. It applies only to transfers of
178 the legal, and not of the equitable, title.

In Union Bank *vs.* Laird, 2 Wheaton, the distinction between a legal and equitable title in bank stock is recognized. See, also, Mechanics' Bank *vs.* Seton, 1 Peters, 300; Brent *vs.* Bank of Washington, 10 Peters, 576; Bank *vs.* Lanier, 11 Wallace, 374.

In this conflict in the authorities we must consider and construe this section so as to be in harmony, if possible, with decisions of the Kentucky courts in construing similar provisions in other statutes. It is fair to infer that the Legislature used language in this section, with a like meaning, as had been put upon it by the court in other statutes. In construing this section we should also consider the scope and object of the statute.

This chapter (56) does not make stockholders, who may be such under an incorporation organized under its provision, liable
179 for the debts of the corporation, except to the extent of the unpaid installments on the stock owned. There is no individual liability beyond this, neither is the corporation's stock-book open to public inspection. The stockholders, and they only, are given the right to inspect the books of the corporation to see who are stockholders, &c.

If this section be considered as a registration act, and thus to give an opportunity of ascertaining who are the stockholders, it gives such opportunity to a very limited number, and the general public are not in the least benefited. There is, therefore, no reason in the general purposes of the statute for construing the 11 section to be

intended for the protection of other than the corporation and its stockholders.

If we should consider this section as intended for the protection of the general public, and as such a registration law, we have analogous provisions in the chapter 24 of the General Statute,
180 requiring the recording of deeds, &c.

The 10th section of this chapter provides:

"No deed of trust or mortgage conveying a legal or equitable title to real or personal estate shall be valid against a purchaser for a valuable consideration, without notice thereof, or against creditors, until such deed shall be acknowledged or proved according to law and lodged for record."

Again, in section 14 of same chapter, it enacts: "Deeds made by residents of Kentucky, other than deeds of trust and mortgages, shall not be good against a purchaser for a valuable consideration not having notice thereof, or any creditor, except from the time the same shall be legally lodged for record, unless the same be so lodged within sixty days from the date thereof."

It is the settled construction of these sections that a mortgagee or a vendee with an unrecorded mortgage or deed has a better
181 right than an attaching or execution creditor of the mortgagor or vendor, provided such creditor was given notice before he perfected his lien and acquired the legal title.

Righter *vs.* Forrester, 1 Bush, 278.
Low, &c., *vs.* Blener, 10 Bush, 331.
Finley *vs.* Spratt, 14 Bush, 225.

This had been the construction of a similar provision in the Revised Statutes, and was the settled construction when the law authorizing incorporation was first enacted in 1869; and it may be presumed that the Legislature used the word "valid" in this section with a knowledge of the construction which had been put upon it in construing the law in relation to conveyances.

Therefore, I do not concur in a construction of this 11th section of chapter 56 which would make all transfers of stock void as to third parties, until and unless they are entered in the corporation books.

This construction may be in accordance with the literal lan-
182 guage of the section; but considering the scope and object of the chapter and the previous decisions of the court of appeals of this State, I do not think such was the legislative intent.

The complainant's bill should be dismissed, and the cross-complainant, Thurber, is entitled to the two hunded and fifty shares of stock, and a new certificate for that amount from the company, and such will be the decree.

JNO. W. BARR.

The parties filed their written agreement herein, which is as follows:

Agreement.

In the Circuit Court of the United States for the District of Kentucky.

W. H. CRUMP *vs.* JAMES WILSON, &c.

We agree that the certificates dated January 13th, 1880, for
183 250 shares of the capital stock of the Southern Dairy Company of Louisville, mentioned in the answer of the defendant, H. K. Thurber, herein, are reissues for certificates that were surrendered by James Wilson to the company now represent stock that was issued to said Wilson when the said company was first organized.

EMMET FIELD,
Att'y for Crump.
BARRET & BROWN,
For Thurber.

The evidence on behalf of the complainant is as follows:

Depo'n of Crump.

The deposition of plaintiff, W. H. Crump, taken on his own behalf, is as follows:

1. Name, W. H. Crump; age, 44 years; occupation, commission merchant.

2. Please state whether or not at any time in the year 1879, you made a contract with the defendant, James Wilson, in regard
184 to the sale of the right to manufacture olemargerine & other products under any patent; if you did, state where and when the contract was made, what the terms of it were, and what you did under it.

Ans. In the month of April, 1877, I made a contract with said Wilson to assist him to negotiate the sale of the right to manufacture olemargerine and other products of animal fat under what is called "Marge" patent. The said contract was made in Cincinnati, Ohio. The def't Wilson owned said patent for the States of Indiana & Kentucky, and he desired to sell the right to manufacture under said patent in those States. The terms of the contract we entered into were as follows: The defendant Wilson was to receive $12,000 for the right to manufacture under said patent for the State of Kentucky, and $8,000 for the right to manufacture for the State of Indiana, and all that he might receive
185 for the right to manufacture in either of said States over and above s'd stated amounts was to be divided equally between us; I had been superintendent of the works in Cincinnati for the manufacture of these products for two years, and was familiar with the processes & machinery used for making the same. As soon as said contract was made we went to work to interest men of capital in this city in said manufacture under said patent with the view of disposing of the right to manufacture in accordance with our con-

tract. I advised said Wilson from time to time of the progress we were making, and thought we would succeed in disposing of same. I was then engaged in the sale of these products here in this city, in connection with my business as commission merchant, which was a great assistance in the organization of a company for its manufacture, by having s'd product for exhibition, &c., and by showing a large list
186 of persons to whom sales had been made. I talked to many men of capital here, and showed them the great demand for the product and the cost of manufacturing same under this patent. On one occasion we had a meeting of the butchers connected with the "Butchers' Association," with a number of others I had previously consulted in regard to the matter. Our efforts to dispose of the patent in this State were successful, and we disposed of the same by organizing a corporation under the laws of the State, styled the "Southern Dairy Company of Louisville." We sold the right for the State of Kentucky to this corporation, at the price of $100,000, said company to issue stock to that amount, $50,000 of which was taken by the incorporators as working capital, at 50 cts. on the dollar, and the remaining $50,000 was issued to James Wilson.

In the meantime Wilson sold $10,000.00 of the stock issued
187 to him, at 50 cts. on the dollar, receiving therefor $5,000, still leaving him in possession of $40,000 of said stock.

The other stockholders paid in 50 cts. on the dollar of their stock as working capital, as agreed on, and the stock issued to Wilson was in payment of the right to manufacture under said patent in this State. The Southern Dairy Co. then proceeded to locate and erect machinery for the manufacture of said product, I assisting in said location, and contracting for the erecting said machinery.

After completion of the same I gave personal superintendance to the manufacture. Mr. Wilson and I then went to Indianapolis to see what could be done there towards disposing of the right for Indiana.

We went to the stock-yards & other places, and made estimates of the amount of fat to be procured there, and endeavored to dispose of s'd right to parties there. In the meantime the Southern Dairy Company of Louisville, by its representatives, Mr. Barret &
188 others, came to Indianapolis, and we made a sale to them of the said right for Indiana. The terms of said sale were that said company should issue $100,000 of new stock, of which $50,000 was awarded to Wilson as the price of s'd right for Indiana, and the remaining $50,000 was divided among the other stockholders. All of the stock received by Wilson was to be free from calls & assessments of any character.

3rd. Why was all this stock issued to Wilson and none to you?

Ans. This was because he was the owner of the rights for these two States, which he claimed cost him the respective am'ts of $12,000 & $8,000.00 from the U. S. Dairy Comp'y of N. Y.

It was not known what the stock he received would sell for, and our bargain was that he was to receive the full am'ts, as aforesaid, before I could share with him.

Wilson has never transferred any of this stock to me; nor
189 have I received from him any recompense whatever. I have applied to him repeatedly for a settlement, but he has never complied with my demand.

The last time I saw him at the factory I urged a settlement on him, as I feared he might die suddenly in one of the attacks to which he was subject. He remarked that he would have it attended to. Mr. Wilson lives in the city of New York, and since the conversation above mentioned I have written to him several times demanding a settlement, but he has paid no attention to my letters. My anxiety for a settlement arises from the fact that I know Wilson has been disposing of his stock. I wrote him once in regard to his selling the stock, and his reply was that he had not sold a dollar of it. The letter marked "Exhibit D," dated Nov. 27, '79, with petition herein, is the letter received on that occasion from Wilson. I file herewith and make a part of this deposition, marked Exhibit L, two letters and three telegrams received from Def't
190 Wilson. I received many other letters and telegrams from def't in regard to this matter, but, not supposing I would ever have any use for them, I destroyed them.

I file herewith, marked "Exhibit M," a statement prepared & made by me, a copy of which was used to show to parties the probable profits of the business, & thereby to interest them to go into the enterprise. This is only one of many statements and calculations made by me & submitted to different parties while we were trying to sell the rights for Kentucky and Indiana. The stock of the Southern Dairy Co. of Ky. was worth when it was first organized 50 cents on the dollar. It has steadily increased in value until sales have been made at 85 cents on the dollar, and it is certainly not worth less than that now.

Wilson has certainly received more than $20,000 in value for the rights of Indiana & Kentucky aforesaid.

Wilson is now indebted to me at least in the am't of $30,000
191 of the capital stock of s'd Southern Dairy Company. Under our contract I was to have one-half of all that was realized over $20,000, and 300 shares of stock in said company is one-half of what s'd Wilson received for the rights in s'd two States over and above said sum of $20,000. I have no interest in said company except that derived from my contract with Wilson.

W. H. CRUMP.

Also the depositionof John E. Norris, taken on behalf of plaintiff, and is as follows:

Depo'n of J. E. Norris

What is your name and occupation, and where do you reside?

Ans. My name is John E. Norris; am stock trader; reside in Louisville, Ky.

2nd. Are you acquainted with the defendant, James Wilson, and with the plaintiff, W. H. Crump; if you are, how long have you known them?

Ans. I am; have known them for some two years from the
192 time Mr. Wilson organized the Southern Dairy Company.

3rd. Do you know whether or not the plaintiff, Mr. Crump, assisted the defendant Wilson in organizing the Southern Dairy Company, or that he did anything towards assisting Wilson in his effort to dispose of the patent under which the said company manufactured olemargerine?

Ans. I know that he assisted Mr. Wilson here in getting the factory into successful operation. I know also that when I was in St. Louis with Mr. Wilson he wrote or telegraphed to Mr. Crump at Louisville, Ky., to come to St. Louis. Mr. Crump did come, and was very active during the time I was there in assisting Mr. Wilson in his effort to get the factory there into successful operation.

4th. Do you know whether or not Mr. Crump had any experience in manufacturing olemargerine under the patent controlled by Wilson before the establishment of the factory here?

193 Ans. No; I do not, except from hearsay.

5th. Did or not Mr. Crump, after the Southern Dairy Company was established, superintend the working of it until others became familiar with the process?

Ans. I know Mr. Crump worked there when the factory was first opened, and they relied considerably on his judgment in perfecting them in the details of the manufactory.

6th. Did you ever have any conversation with Crump and Wilson, or with Crump in regard to the making of olemargerine under said patent before the organization of the Southern Dairy Co.?

Ans. About the time of the organization and immediately after I had conversations as to the probability of such a manufactory being profitable; both were enthusiastic, and both gave statements showing cost of raw material and manufacturing, and also show-
194 ing the price said butter would bring when placed upon the market

7th. Are you one of the directors, or connected in any manner with the Southern Dairy Co.?

Ans. I was at that time, but am not now.

8th. Did you become interested in the Southern Dairy Co. after or before the conversations mentioned?

Ans. After.

9th. Did Mr. Crump at any time before you became a stockholder in the Dairy Company show you any olemargerine manufactured under the said patent, or otherwise endeavor to interest you in the process?

Ans. Before I became interested I stopped in at Mr. Crump's store and there examined the olemargerine. I cannot say that Mr. Crump endeavored to influence me to take stock; he was
195 very enthusiastic, and his statements did have some influence in inducing me to become interested.

10th. Did you ever have any conversations with James Wilson in regard to Mr. Crump's interest in the enterprise? If so, what did he say on that subject.

Ans. When I was in St. Louis I tried hard to find out from Mr.

Wilson how Mr. Crump was interested, whether he paid him a salary, or whether he was interested with himself in the sale of the patents. I never could find out, as he never told me anything, or gave me any satisfaction on that point.

JOHN E. NORRIS.

The evidence on behalf of the defendant is as follows:

The deposition of HORACE K. THURBER, taken on behalf of himself herein, viz:

Question. Please state your name, age, and occupation and place of residence.

196 Answer. My name is Horace K. Thurber, and occupation is that of wholesale grocer; age, fifty-two; and I live at 146 West 12th St., New York city.

Q. Please state whether or not you are one of the defendants, and cross-complainant to this action.

A. I am.

Q. State whether or not you ever purchased of James Wilson any share of capital stock in the Southern Dairy Company of Louisville, Kentucky.

A. I did.

Q. State how many shares, and of what value.

A. I bought two hundred and fifty shares of the capital stock of the Southern Dairy Co., of the par value of one hundred dollars each, making twenty-five thousand dollars par.

Q. State when this purchase was made.

A. October twenty-sixth, eighteen hundred and eighty.

197 Q. State when the transfer of the certificates was made and dated.

A. At the same day, or within a day or two.

Q. Please state what consideration you paid for these shares of capital stock.

A. I paid fifteen thousand dollars cash.

Q. Please state whether or not the fifteen thousand dollars paid by you for said stock was the market value of said stock on the date of the purchase.

A. I believe that it was all it was worth at that time.

Q. State where this purchase and sale was made.

A. It was all it would bring at that time. In my office, in the city of New York.

Q. State whether or not this purchase was made with any fraudulent intent, or with any knowledge of any other person or persons having any claim or liens upon said stock.

198 A. It was not; I had no suspicion or thought that any one had any claim or right to that stock, except Mr. Jas. Wilson.

Q. State, if you know, how the capital stock so purchased was evidenced; and, if you know, give the numbers, shares, and dates of the certificates.

A. They were in those certificates two of one hundred shares each

and one of fifty shares *each*. No. 39 for one hundred shares, No. forty for one hundred shares, and No. fifty-three for fifty shares; date, thirteenth of January, eighteen hundred and eighty; all issued in the name of James Wilson.

Q. State where said certificates of stock now are, and whether or not they are the same mentioned and set forth in your sworn answer in this action.

199 A. The shares of stock I sent to my attorneys, Barret & Brown, of Louisville, Ky., and they are the same set forth in my answer.

Q. State whether or not there was any other than a *bona fide* transaction in the dealings with Mr. James Wilson in relation to this matter.

A. There was not.

Q. Please state whether or not you have caused a demand to be made upon the Southern Dairy Co. of Louisville, Ky., for the cancellation of these certificates, and that others be issued to you in place of such certificates.

A. I have.

Q. Please state whether or not it has been done.

A. It has not been done. The certificates of capital stock referred to above being those in one, numbered thirty-nine, for one hundred shares; one numbered forty, for one hundred shares; and one

200 numbered fifty-three, for fifty shares, all dated January thirteenth, eighteen hundred and eighty, and all issued in the name of James Wilson, are made a part of and included in this deposition, the same being the certificates set forth in the answer of this deponent in the above-entitled action.

Cross-examination:

Q. When you say you paid fifteen thousand dollars cash for the stock, do you mean that you delivered that amount in money to Mr. Wilson, or that you paid him that amount by check or otherwise?

A. I mean to say that I paid him cash, and that I have none but cash transactions with him, and there has been a great many cash transactions with Mr. Wilson, of which this is one—part have been checks—I think some portion may have been bills, mostly were checks.

201 Q. Can you remember whether this particular transaction was by check or not?

A. I do not now remember whether this special transaction was by check.

Q. Would your check-book or any other of your books show whether the payment was by check?

A. It might show.

Q. Will you please have your books examined with reference to this point.

A. I will look it over to-night.

Q. Please state whether or not Wilson was a debtor to the firm of

Thurber & Co. at the time those certificates were obtained from him.

Objected to by defendant's att'y as incompetent, immaterial, and not proper at cross-examination.

A. He may have been, but if so, for only a small amount.

Q. Do you remember definitely whether or not the payment for this stock was not made by crediting Wilson's account to the
202 extent of the amount paid for the stock?

Same objection as above by defendant's att'y.

A. I do not think it was; it was not.

Q. Can you state positively whether or not, at the time these certificates were transferred to you, they were not transferred as collateral to secure Wilson's indebtedness to your firm?

Same objection as above made by defendant's att'y.

A. I state positively that it was not.

Q. Was the transfer to you individually, or to the firm of Thurber & Co.?

A. It was to me individually.

Q. Why were not the certificates delivered on the twenty-sixth of October, at the time you made the purchase?

A. My impression is that they were delivered at that day.

203 Further examination continued until Nov. 18th, at 12 o'clock.

ALEX. WILEY,
Notary Public, N. Y. Co.

NOVEMBER 18TH—12 m.

Examination of HORACE K. THURBER continued:

Q. Have you examined your books with reference to the manner in which this stock was paid for?

A. I have all the memorandas that I keep of my own business; they are mixed up with other transactions of my own and of the firm's, so that I cannot locate individual checks to pay for this stock, but I swear positively that it was paid for by me in cash, for I have had no other than cash transactions with him.

Q. Will you please state how it was you came to buy this stock?

204 A. Mr. Wilson wanted to sell me this stock, & stated to me that it was worth more than he asked for it; and, after seeing Mr. Barret, the president of the company, I purchased it, being satisfied that it was a good investment in his hands.

Q. When this stock was delivered to you, why was the certificates left blank, instead of the power of attorney being filled out with your name?

A. Because transfers are universally made in that way, & —— stock that I intend to hold on to for investment, for convenience of selling & transfer they are left in that way; but this is the first time

in my experience that I ever had any difficulty in regard to stock transfers being made in blank.

Q. You state in your direct examination that you had de-
205 manded a transfer of this stock to you on the books of the company; was not that demand made about the first of last February?

A. I do not remember the first time that I asked Mr. Barret to transfer that stock. We had had a talk about it, two or three times, of his making the transfer prior to the formal demand, which he had refused, which I think was some time last winter.

HORACE K. THURBER.

Also the deposition of S. E. SANDFORD, taken on behalf of the defendant & cross-plaintiff, Horace K. Thurber, viz:

Interrogatory first. State your name, age, residence, and occupation, & where you reside and were employed on the 26th October, 1880.

Answer. Stephen Edward Sandford; aged 16 years; resi-
206 dence, No. 10 Morton St., New York city; office-boy in the employ of Mr. Wilson.

I resided at the same place I do now, & was also employed at the same place.

2nd interrogatory. There are now shown you three (3) certificates of stock of the Southern Dairy Company of Louisville, each signed by J. G. Barret, president, and George T. Wood, secretary, each dated 13 January, 1880, each issued in the name of James Wilson, certificate No. 53 being for fifty (50) shares, certificate No. 40 being for one hundred (100) shares, certificate No. 39 being for one hundred (100) shares.

Each of said certificates purports to have upon the back thereof a printed form of endorsement for transfer, dated 26th October, 1880, and signed by James Wilson and S. E. Sandford.

Please now examine each of said certificates, and particularly the endorsements and signature on the back of each. Are you
207 or not the person whose name appears as witnessing the signature of James Wilson?

Answer 2nd. (Certificate shown witness.) I am.

Third interrogatory. State whether you know the said James Wilson; if you do, state further how long you have known him; do you, or not, know his handwriting? Is his signature genuine?

Answer 3rd interrogatory. I do know him. I have known him about three years. I do know his handwriting. It is.

Fourth interrogatory. Did you, or not, see the defendant James Wilson sign his name on the back of each — said certificates? If you did see him do so, state further when and where it was.

Answer fourth interrogatory. I did see him sign his name; I cannot state positively, but I think it was at his office, Courtlandt St.; I cannot state date.

208 Fifth interrogatory, Please refer to each of the said certificates and make them by reference a part of your deposition.

Answer fifth interrogatory. Certificate No. 39, for one hundred shares, was witnessed by me; certificate No. forty, for one hundred shares, was witnessed by me, and certificate No. 53, for fifty shares, was witnessed by me.

Sixth interrogatory. Have you any interest in this suit?

Answer sixth interrogatory. I have not.

Sixth interrogatory. If you know anything further to the benefit or advantage of H. K. Thurber, the defendant and cross-plaintiff, please state it.

Answer seventh interrogatory. I know of nothing further to the benefit or advantage of Mr. Thurber.

Cross-interrogatories in behalf of plaintiff:

209 First cross-interrogatory. If you state you saw James Wilson sign his name on the back of the said certificates, state who was present at the time, and where it was done.

Answer 1st cross-interrogatory. I cannot state positively that any one, other than Mr. Wilson, was present at the time. Mr. Deen, Mr. Wilson's secretary, may have been in the office at the time, if it was done at Mr. Wilson's office, 21 Courtlandt St., of which I cannot positively say.

Second cross-interrogatory. Was the date of the transfer (Oct. 26th, 1880,) on the back of the said certificates at the time you signed your name as the attesting witness? Do you remember whether or not you saw the said date at that time?

Answer 2nd cross-interrogatory. I did not notice whether
210 it was or not. I do not.

3rd cross-interrogatory. Are you able to state, otherwise than by reference to said date, at what date you signed as attesting witness to said transfer? If you can, please do so.

Answer 3rd cross-interrogatory. I am not able to state. I cannot.

4th cross-interrogatory. Why was the name of the assignee of said certificates not written in the power of attorney, on back thereof, at the time of the alleged transfer?

Answer 4th cross-interrogatory. I do not know, and cannot say.

5th cross-interrogatory. Were you in the employment of the said Wilson on the 26th of Oct., 1880, and are you now in his employment?

211 Answer 5th cross-interrogatory. I was in his employment then, and am now.

S. E. SANDFORD.

Order Filing Appeal Bond.

And afterwards, on Tuesday, June 8th, 1882, came the complain- W. H. Crump, by his counsel, and filed his appeal bond herein, which is as follows:

Appeal Bond.

Circuit Court of the United States, District of Kentucky.

W. H. CRUMP *vs.* JAMES WILSON *et al.*

Know all men by these presents, that we, W. H. Crump, principal, and C. W. Sisson, surety, are held and firmly bound unto H. K. Thurber in the sum of five hundred dollars, to be paid to the said H. K. Thurber, executors, or administrators. To which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our, heirs, executors, and administrators, firmly by these presents.

212 Sealed with our seals, and dated this eighth day of June, A. D. 1882.

Whereas the above-named W. H. Crump hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit, by the circuit court of the United States for the district of Kentucky, at Louisville:

Now, therefore, the condition of this obligation is such, that if the above-named W. H. Crump shall prosecute his said appeal to effect, and answer all costs, if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

W. H. CRUMP. [L. S.]
C. W. SISSON. [L. S.]

Sealed and delivered in presence of—
SAM'L B. CRAIL, *Clerk.*

Approved—
JNO. W. BARR, *Judge, &c.*

213 DISTRICT OF KENTUCKY:

I, Samuel B. Crail, clerk of the circuit court of the United States for the district aforesaid, at Louisville, do hereby certify that the foregoing 212 pages contain a true and complete transcript of the record and proceedings had in the court in the case mentioned in the caption hereof.

Witness my hand and the seal of said court, this 17th day of July, 1882.

[SEAL.] SAM'L B. CRAIL, *Clerk.*

Endorsed on cover: Kentucky C. C. U. S. No. 267. W. H. Crump, appellant, *vs.* H. K. Thurber. Filed September 16, 1882.

115-56

PHILADELPHIA BAR ASSOCIATION

Supreme Court of the United States.

W. H. CRUMP, Appellant,

vs. No. 267.

H. K. THURBER, Appellee.

BRIEF FOR APPELLANT.

EMMET FIELD,
OF COUNSEL.

G. C. WHARTON,
COUNSEL.

PRINTED BY THE COURIER-JOURNAL JOB PRINTING CO.

Supreme Court of the United States.

W. H. CRUMP, - - - - APPELLANT,

vs.

H. K. THURBER, - - - - - APPELLEE.

BRIEF FOR APPELLANT.

STATEMENT OF FACTS.

James Wilson, a resident and citizen of the city of New York, is the owner of the patent under which oleomargarine is manufactured. He desired to sell the right to manufacture under that patent in the States of Kentucky and Indiana. He came to Louisville and engaged the appellant, W. H. Crump, to assist him to sell the right for those States. In April, 1879, they entered into a parol contract by which Wilson was to receive $12,000 for the right to manufacture under the patent in Kentucky, and $8,000 for the right to manufacture in Indiana, from any sale made, and whatever was received for either State above the amount which Wilson was to have for that State was to be equally divided between Wilson and Crump.

Crump had been engaged for more than a year in the manufacture of oleomargarine under the same patent in the city of Cincinnati, and was familiar with all the details of the business. He had severed his connection with the Cincinnati factory, and had become a citizen of the State of Kentucky, and established himself in business in the city of Louisville. He introduced the product of the Cincinnati factory in this market, and had built up a profitable trade in it. As soon as the contract be-

tween Wilson and himself was made, Crump began to interest men of capital in the enterprise. By his practical knowledge he was enabled to furnish statements showing the cost of the material, the cost of manufacturing, the demand for the product, and all other information desired upon the subject.

When Crump had gotten the negotiation for a sale of the right to manufacture in Kentucky sufficiently advanced, he notified Wilson, who then came to Louisville, and on the 3d day of June, 1879, he and Crump disposed of the right to this State, by Wilson and certain other gentlemen filing articles of incorporation in the Jefferson County Clerk's Office of Kentucky, and organizing a corporation under the general incorporation statute of Kentucky, which they named the Southern Dairy Company, of Louisville.

The Southern Dairy Company, of Louisville, bought the right to manufacture under the said patent in Kentucky, by issuing $100,000 of stock in the corporation in shares of $100 each, of which five hundred shares were to have been issued to Wilson; but, before they were issued, he sold one hundred shares and received therefor $5,000 cash. In consequence of this sale, only four hundred shares were issued to him. The remaining five hundred shares were issued to the other incorporators, for which they paid in $25,000 as a working capital.

On the 24th day of July, 1879, the same corporation bought the right for the State of Indiana, by issuing $100,000 more of stock, of which Wilson received five hundred shares.

All of this stock was issued to Wilson by arrangement between himself and the Company. Crump was not one of the incorporators, and had no voice in this disposition of the stock. He gave his personal attention to fitting up a factory for the Company, and continued to supervise it until the success of the enterprise was assured. Wilson had been a frequent visitor to this city, and was very greatly interested in Crump's efforts for the success of the Company, but when a demand was made upon him for a compliance with his contract, his visits and letters suddenly ceased. Crump wrote him several times at New York and demanded a division of the stock in accordance with their

contract, but no reply was received. He kept himself informed as to the transfers of stock made upon the books of the company by Wilson, and when he discovered that the shares in which he had an interest were being transferred, he determined to institute this suit.

On the 26th day of November, 1880, Crump instituted this suit in the Louisville Chancery Court against Wilson and the Southern Dairy Company, of Louisville. He set forth his contract, alleged that Wilson had long since received greatly more than the $20,000 mentioned. He alleged that he was the owner of one-half of the stock that Wilson received over and above $20,000, and he alleged that one-half over that amount is three hundred shares, or $30,000 worth, and he prayed that the Company be ordered and compelled to cancel the stock standing upon its books in Wilson's name to that extent, and issue certificates of stock therefore to him. Various letters and telegrams received from Wilson by Crump while the negotiation for the sale was in progress, and immediately after it was effected, fully sustaining the allegations of the petition, were filed as exhibits therewith.

A warning order was issued against Wilson, and an attorney appointed to notify him of the nature of the suit, and to defend for him, in compliance with section 58 of the Kentucky Civil Code of Practice. A copy of the petition was also served upon him as provided in section 56 of the Kentucky Code.

On the 4th of February, 1881, the Southern Dairy Company filed its answer in which it stated that, at its organization, the defendant, Wilson, became a stockholder for a very large amount, and that from time to time he sold divers shares of his stock, and the same were regularly transferred on the books of the company; that at the time of filing the petition there stood on the stock-book of the Company two hundred and fifty shares of the Company's capital stock, in the name of the defendant Wilson, and it still stands in his name. The answer further stated that the Company was informed that, on the 26th day of October, 1880, Wilson sold the two hundred and fifty shares of stock to "one H. K. Thurber," and that Thurber held the cer-

tificates therefor. The plaintiff, in reply, alleged that the pretended transfer was a mere sham, and that the Company was not notified that Thurber held the certificates therefor, or claimed to have any interest in the stock until about February 1, 1881, which was long after the institution of this suit. This allegation was not denied.

The plaintiff immediately filed an amended petition making Thurber a defendant, in which he charged that Thurber never bought the stock, and alleged that although the purchase was pretended to have been made on the 26th day of October, 1880, Thurber did not notify the Company until about February, 1881. A warning order was issued, an attorney appointed to defend, and a copy of the petition and amendments served upon Thurber and Wilson. Thurber paid no attention to the suit until the 11th day of October, 1881—the day upon which the case was called for hearing. Upon that day he filed a petition to remove the case into the Circuit Court of the United States for the District of Kentucky. Plaintiff objected to the removal, his objection was overruled, and the removal ordered.

Thurber filed his answer in the United States Court, alleging he was the owner of the stock in question. In response to the direct allegation that he did not give the Company notice that he pretended to have any claim upon the stock standing upon the books in Wilson's name until February, 1881, he answered: "He does not now remember when it was that he first advised the defendant, the Southern Dairy Company, of Louisville, that he held the two hundred and fifty shares of its stock."

Upon the hearing the Court adjudged that the stock in question belonged to Thurber, and ordered the Company to cancel the certificates held by him issued to Wilson, and issue certificates to him. Crump's bill was dismissed. He prayed and was granted an appeal to this Court.

ASSIGNMENT OF ERRORS.

1. The Court below did not have jurisdiction of this case, and it erred in assuming jurisdiction and rendering a judgment therein.

2. The Court erred in not remanding the case to the Louisville Chancery Court.

3. The Court erred in holding that the pretended transfer by Wilson to Thurber of the 250 shares of the capital stock of the Southern Dairy Company, of Louisville, invested Thurber with the ownership thereof, as against the appellant.

4. The Court erred in holding that a valid transfer of said stock could be made, "except as between the parties thereto, until the same are regularly entered upon the books of the Company, so as to show the name of the person by whom and to whom the transfer is made, the numbers or other designation of the shares, and the date of the transfer," as directed by the General Statutes of Kentucky, chapter 56, section 11, page 548.

5. The Court erred in adjudging that the said Thurber was entitled to have the certificates for said stock, standing in the name of Wilson upon the books of the Company, retired or cancelled, and other certificates issued in lieu thereof to him.

6. The Court erred in adjudging that the Southern Dairy Company, of Louisville, cancel the said certificates and issue and deliver to said Thurber, or his order, new certificates.

7. The Court erred in holding that said Thurber, as a matter of fact, bought the said stock from Wilson, or paid him anything therefor.

8. The Court erred in dismissing the complainant's bill, and in adjudging costs against him.

ARGUMENT.

The ground relied upon by the appellee, Thurber, in his petition for a removal of this suit from the Lousville Chancery Court to the Circuit Court of the United States, is, that in it there is a controversy between himself, a citizen of the State of New York, and W. H. Crump, who is a citizen of Kentucky, and the said controversy is wholly between citizens of different States and can be wholly determined between them.

The defendants to Crump's suit are James Wilson, a citizen of State of New York, H. K. Thurber, a fellow-citizen with Wilson, and the Southern Dairy Company, of Louisville, a citizen of the State of Kentucky. Crump claims that certain stock

standing upon the books of the Dairy Company belongs to him, and he asks that the company be compelled to cancel the certificates outstanding in the name of Wilson and issue certificates therefor to him.

The Dairy Company, in its answer, says the stock belongs to Thurber, although it admits there has been no transfer of it to him, and that the Company was not informed of his ownership until some months after the institution of this suit.

Thurber claims the stock and asks that his co-defendant, the Dairy Company, be ordered to issue new certificates therefor to him.

The Dairy Company, a citizen of Kentucky, and a co-defendant of Thurber is a necessary party to this suit for the determination of the issues made by both Crump and Thurber.

In the case of Shainwald, etc., *vs.* Lewis, *etc.*, 108 U. S., 158, this Court said:

"When, in the settlement of a controversy, one of the plaintiffs and one of the defendants, necessary parties for the determination of the issues, are citizens of the same State, the cause can not be removed from the State Court under the first clause of section 2, of the act of March 3, 1875, ch. 137, 18 stat., 470." (Syllabus.)

That case re-affirms the law as declared in Hyde *vs.* Ruble, 104 U. S., 407, and in Blake *vs.* McKim, 103 U. S., 339.

Therefore, as Crump and the defendant, the Dairy Company, are both citizens of Kentucky, the Circuit Court of the United States, had no jurisdiction of this suit.

It will be remembered that the Southern Dairy Company was organized under the general incorporation statute of Kentucky. It is provided by section 11 of that statute, page 548, General Statutes of Kentucky, as follows:

"Transfers of stock shall not be valid, except as between the parties thereto, until the same are regularly entered upon the books of the Company, so as to show the name of the person by whom and to whom the transfer is made; the numbers, or other designation of the shares, and the date of the transfer. The books of the Company shall be so kept as to show, intelligibly, the original stockholders, their respective interests, the amount which has been paid thereon,

and all transfers thereof; and such books, or correct copies thereof, so far as they relate to the items mentioned in this section, shall be subject, at all times, to the inspection of any stockholder desiring the same."

The appellant contends that even if the transfer of the certificates from Wilson to Thurber had been in good faith, and for value (which he denies), the stock not having been transferred on the books of the Company, in obedience to the statute, Thurber acquired title against Wilson only, and against no one else.

It may be considered as settled that, as a general proposition, where the private charter or by-laws of a corporation requires the stock to be transferred on the books of the Company, the provision is for the benefit of the Company alone; but that is a question of no consequence in this case.

The distinction I wish to draw is, that when a general statute prescribes the manner in which stock is to be transferred, a purchaser can not acquire title, as against the creditors of the vendor, unless the transfer is consummated in the manner directed by the statute, before the creditors acquire rights against the stock; and that, in consequence of the provision in our public statute, under which the Dairy Company was organized, directing that "Transfers of stock shall not be valid, except as between the parties thereto, until the same are regularly entered upon the books of the Company, so as to show the name of the person by whom and to whom the transfer is made, the numbers or other designation of the shares, and the date of the transfer," Thurber acquired no right whatever to the stock, by reason of the mere endorsement of the certificates.

This principle is sustained by eminent authority. In the case of Fisher *vs.* Essex Bank, 5 Gray, 373, the Supreme Court of Massachusetts, Judge Shaw, delivering the opinion, said:

"The bank is of recent origin; the act was passed in 1851, Statutes 1851, chapter 269. Like most other acts of incorporation, the act, after creating the corporation, giving it a name, fixing its locality and limiting its capital stock, defines its powers and duties by reference to other acts on the subject. But section 3 is a special pro-

vision to this effect. The stock of said bank shall be transferable only at its banking-house, and on its books. By the law of this Commonwealth, acts of incorporation are deemed public acts. Revised Stat., chap. 2, section 3. Like other public acts of legislation, their provisions constitute laws by which all Courts and magistrates, all citizens and subjects, are bound. * * * * * * * * * * * * All these objects are most effectually accomplished by making the transfer at the bank, the decisive act of passing the property, the legal, transferable, attachable interest. I do not stop to ask, precisely, what particular act would constitute such a transfer; whether it must be actually entered on the books, or whether the delivery of the certificate by the holder, ready to transfer, or with a written transfer executed, so that nothing remains but the mere executive act of the Clerk, is sufficient. In either case, it would show who is, at any time, the actual owner, by the books, and inform a creditor, or other person having occasion to know and right to inquire. It is necessary to fix some act, some point of time, at which the property changes and vests in the vendee; and it will tend to the security of all parties concerned, to make that turning point consist in the act which, whilst it may be easily proved, does, at the same time, give notoriety to the transfer.

"It would seem to us to be going beyond the rules of just exposition, to hold that a plain provision of a statute law, calculated to promote the security of important legal rights in important particulars, should be construed to be a regulation made for the convenience and protection of the banks. The clause itself is too clear to admit of doubt. Shall be *transferable* only, that is, capable of being transferred—the largest and broadest term to express alienation, on one part, and acquisition on the other; and the word *only* carries an implication as strong as negative words could make it, that is, in no other mode. It was not to prescribe one mode, leaving others unaffected; it made that mode exclusive."

It will be observed that the Massachusetts statute only directed how the stock should be transferred, while our statute not only directs how it shall be done, but declares, in addition, that a transfer in any other way *shall not be valid*, that is *shall be void*, except between the parties.

In Maine there is a statute very similar to ours. That statute was construed by the Supreme Court of that State in the

case of Skowhegan Bank *vs.* Cutter, 49 Me., 318. The opinion says:

"In order to bring any one within the statute, we think the sale should not only be consummated so as to be valid between the parties, but that it should be so made as to be valid against all persons, except on the ground of fraud. A transfer of bank stock is not thus valid, until recorded. Until that is done, a creditor may attach it, without alleging fraud. Unless the transfer is recorded, therefore, he can not be injured by it. There being no legal evidence in this case that the transfer was entered on the books of the bank, and parol evidence of that fact having been improperly admitted, the verdict must be set aside and a new trial granted."

In Connecticut there is a similar statute. In Shipman *vs.* Ætna Insurance Co., 29 Conn., 253, it is said:

"An attaching creditor is not bound to look beyond the books of the corporation to ascertain whether his debtor has made an assignment of the stock standing in his name."

California has a statute like ours, forbidding the transfer of stock except upon the books of the Company. It has been frequently construed by the Supreme Court of that State. In the case of Naglee *vs.* Pacific Wharf Co., 20 Cal., 529, it is said:

"The facts in this case are the same as those in the case of Weston *vs.* The Bear River and Mining Co., 5 Cal., 189, in which it was decided that the assignment, by merely a delivery of the certificate of stock, without a transfer on the books of the corporation, was not sufficient to defeat the rights of an attaching creditor.

"It would be unprofitable labor to investigate how far the decisions of other States conflict with ours, or whether the apparent conflict arises from the circumstance that those decisions, many of them, are made upon the effect of by-laws of a corporation restrictive of the general laws of the State relating to the transfer of property, while our decision rests upon a general statute."

The Courts of many of the States in which there is no such statute as ours, recognize the fact in their decisions that if a public statute directs how the stock of a corporation is to be transferred, it can only be transferred as directed by the statute.

In Cornick *vs.* Richards, 3 Lea, 6, the Supreme Court of Tennessee said:

"An assignment or transfer of a certificate of stock in a corporation, whether as collateral or in case of an absolute sale, in the absence of any legislative enactment, passes to the assignee a valid title." (Syllabus.)

And in the Merchants National Bank *vs.* Richards, 6 Mo. App., 454, it is said:

"In the absence of a legislative enactment restraining the transfer of stock to any particular mode, the transfer of stock is complete on delivery of the certificate with power of attorney and payment of purchase-money." (Syllabus.)

But it will probably be urged in behalf of the defendants, that in New York they have a public statute under which certain corporations may be organized: and that by the terms of that statute the stock can be transferred only on the books of the Company, and yet the Courts of that State have held that provision to be solely for the benefit of the Company and corporation creditors.

It is true they have such a statute and it has been so construed, but an inspection of that statute will show that there is no similarity whatever between it and ours. So much of the New York statute as relates to this question is as follows:

"It shall be the duty of every such corporation or company, to cause a book to be kept by the treasurer or clerk thereof, containing the names of all parties, alphabetically arranged, who are, or shall, within six years, have been stockholders of such Company, and showing their places of residence, the number of shares of stock held by them respectively, and the time when they respectively became the owners of such shares, and the amount of stock actually paid in, which book shall, during the usual business hours of the day, on every day except Sunday and the fourth day of July, be open for the inspection of stockholders and creditors of the Company, and their personal representatives, at the office or principal place of business of such Company, in the county where its business or operation shall be located; and any and every such stockholder, creditor, or representative shall have the right to make any extract from such books; and no transfer of stock shall be valid for any purpose whatever,

except to render the person to whom it shall be transferred liable for the debts of the Company, according to the provisions of this act, until it shall have been entered therein as required by this section, by an entry showing to, and from whom transferred." (Digest of Laws of New York, vol. 2, p. 455, sec. 25.)

The leading case construing this section is that of Johnson *vs.* Underhill, etc., 52 New York, 208. It is there said in construction of this act:

"This declaration of the invalidity of any transfer of stock, unless it be made in the manner indicated, seems to be in aid of the evident intent of the statute to protect the creditors of a company formed under it, by giving to them the several and individual liability of the respective stockholders. It meant not only to make all stockholders thus liable, but also to provide the means to the creditors of easily learning who were the stockholders at any time, and of easily showing the fact; and still further, to hold any one ever a stockholder to continued liability, unless there should be put upon the proper book the entry which should show when he ceased to be a stockholder, and to whom he had transferred his stock.

"There is but one exception in terms to this general provision—and that is one which carries still further the intention of the act, by making the transferee of the stock also liable to creditors, in accordance with the provisions of the act.

"The language 'And no transfer of the stock shall be valid for any purpose' is very broad and comprehensive, if taken by itself, apart from the particular section (§ 25) and connection in which it is found. We think that it should be confined in its application to the objects sought by that section, which are the security and ease of remedy of creditors, and the information of stockholders and creditors. * * * *

"The language above quoted is broad enough to prevent the assignee of stock in good faith and on payment of value from acquiring any title to it, if the language be taken by itself, but it is followed immediately by the exception to it: 'And no transfer of stock shall be valid for any purpose, except to render the person to whom it shall be transferred liable for the debts of the Company.' It is not to be supposed that the Legislature meant to impose a liability where it permitted no right to be acquired."

This construction illustrates very aptly the difference between

the New York statute and ours. Our statute has no provisions in regard to the creditors of the Company, nor does it hold the transferee liable for the Company's debts. It does not recognize him in any manner whatever until he becomes a stockholder on the books; and the provision in regard to the transfer is not found in connection with anything that can qualify its plain meaning. Such being the case, in the words of the opinion just quoted:

"The language * * * is broad enough to prevent the assignee of stock, in good faith and on payment of value, from acquiring any title to it."

It is patent, from the difference in the provisions of the two statutes, that ours was not taken from the New York statute.

Our statute is almost identical in language with the statutes of the same kind of Maine, Wisconsin, and California, and was unquestionably modeled after them. The construction given by the Courts of those States is, therefore, of the highest authority. The latest case on this subject is that of the Application of Thos. Murphy, etc., 51 Wis., 522, decided in 1881. The opinion says upon this point:

"We think the true meaning of the language is, and the obvious intention of the Legislature in using it was, that all transfers should be entered, as here required, on the books of the corporation. And it is equally clear to us that all transfers of shares not so entered are *invalid* as to attaching or execution creditors of the assignor, as well as to the corporation and to subsequent purchasers in good faith, and, indeed, as to all persons interested, except the parties to such transfers. All transfers not so entered on the books of the corporation are absolutely void; not because they are without notice, or fraudulent in law or fact, but because they are made so void by the statute. * * * As early as 1838, the statute of the State of Maine 'in relation to the mode of transfer of shares in corporate bodies,' declared that the title to such stock shall not pass from such proprietor until such transfer has so far been entered on the corporate records as to show the names of all the parties thereto and the date of the transfer. * * * In the revised statutes of Maine, of 1841, the above provision is changed so as to read: When the capital of a corporation is divided into shares, and certificates thereof issued, they

may be transferred by endorsement and delivery; *but such transfer* of shares is not valid, except between the parties thereto, until the same is so entered on the books of the corporation as to exhibit the names of the parties, the number of the shares, and the date of the transfer. This is almost the exact language of section 7, chap. 54, R. S. 1849, of this State, and our statute was unquestionably borrowed and adopted almost literally from this statute of the State of Maine, and the construction given to it by the Courts of that State is, therefore, of the highest authority. In Skowhegan Bank *vs.* Cutter, 49 Maine, 315, the Court says, in construing that statute: No transfer of such stock will secure it from attachment until it is entered on the books of the corporation, showing the names of the parties, the number of shares, and the date of the transfer. The State of California adopted, literally, our statute on this subject, in the revision of 1849, by an act concerning corporations, passed in 1850."

The opinion then cites the California decisions on this subject, showing that the Courts of that State give their statute the same construction. It then says:

"We have, therefore, the decisions of the State from which we borrowed this statute, and of the State that borrowed it from us, concurring in its construction, which is quite conclusive authority, without consulting other authorities where similar legal provisions exist, but not in the same language."

It seems, then, to be conclusively established by the authorities, that where a public statute, such as the one under which the Dairy Company was organized, declares that a transfer of stock is not valid unless made as directed by the statute, a transfer made in any other way is absolutely void, as to third parties.

Such being the case, it follows, as of course, that Thurber acquired no title by the mere transfer to him of the certificates as against Crump, and as Crump's *lis pendens* attached long before Thurber gave notice to the Company, or to any one, that he pretended to have any interest in the stock standing in Wilson's name, on the books, he must stand the consequences of his own laches. Crump asserts that this stock belonged to him long before Thurber pretends to have received the certificates, and Wilson, by his silence, admits it. But, independent of this

admission, the case is fully made out by the testimony. (Record 40, 42, 62, 64.)

Were it not for the positive declaration of the statute, that the transfer is not valid if not made upon the books of the Company, Thurber would have acquired an equity if he had paid for and received the certificates. But even then his claim would have been inferior to Crump's, because the latter's interest began with the original issue of the stock, and, as between equities, the prior must prevail.

In the case of Stebbins *vs.* Phœnix Insurance Company, 3 Paige, 360, it is said by Chancellor Walworth:

"Where a legal transfer of stock can be made only on the books of the Company, a person who gets an assignment of stock, without such transfer, obtains only an equitable title to the stock, which can not prevail against a prior equity."

But this principle is so elementary that it is not necessary to multiply authorities in its support.

After the case was transferred to this Court, and after the depositions of Thurber and Sandford were taken by Thurber, the complainant amended his bill, and alleged that the pretended transfer of the stock from Wilson to Thurber was a fraud, and was done to protect the stock for Wilson, and that it is held in secret trust for him. It will be remembered that it is claimed by Thurber, he bought the stock on the 26th day of October, 1880, and that the record shows he kept his alleged purchase a profound secret until about the 1st of February, 1881; he not only did not demand a transfer on the books, but did not tell any one he was the owner.

In New Hampshire, they have a statute directing that stocks must be transferred on the books. In the case of Pinkerton *vs.* Railroad, 42 N. H., 424, a creditor had attached stock standing on the books of the corporation in his debtor's name—a third party intervened, and claimed he was the owner of the stock, and held the certificates therefor properly endorsed, as is claimed in this case. The Court said:

"In the case before us, the stock was pledged to the Granite Bank, on the 8th day of July, 1854, as collateral security for the

owner's indebtedness, by a delivery of the certificates, indorsed by him to the bank of which he was then President; and nothing further was done toward taking possession of the stock until the 3d day of the following August, when the old certificates were surrendered to the transfer agents, and new ones received by the bank. The act of transfer by Holbrook must be regarded as done on the 8th of July, and whatever was done afterward was the act of the bank, and the question is, whether due diligence was used by the bank in taking possession of the stock. It may be answered. that, as the transfer was made at a distance from the place where the stock records were kept, a reasonable time should be allowed to communicate with the officer; but the case finds nothing, and nothing is suggested that could justify a jury in finding that the entry was made in a reasonable time after the act of transfer. There is no suggestion that the communication was made at the earliest convenient opportunity after the transfer on the 8th of July; and if there was a daily mail communication with Manchester, there could be no ground to claim that due diligence was used. * * * * We are brought, then, to the conclusion that the possession of the stock was not changed, and that no satisfactory explanation of it is given; and that, therefore, there is shown a secret trust, which avoids the transfer as to this plaintiff."

According to the principle declared in that case, the unexplained delay upon the part of Thurber, from October 26, 1880, to February 1, 1881, in demanding a transfer upon the books, is conclusive evidence of fraud, and of a secret trust in behalf of Wilson.

The statute in question has never been construed by the Court of Appeals of Kentucky, but, if we reason from analogy, we will have but little difficulty in determining that Court would be compelled to hold that transfers of stock in a corporation organized under the provisions of the General Statutes of Kentucky, are not valid unless the requirements of the statute in that regard are complied with.

The learned Judge of the Circuit Court, in the opinion delivered in this case, says upon this subject:

"If we should consider this section as intended for the protection of the general public, and as such a registration law, we have analogous provisions in the twenty-fourth chapter of the General

Statutes, requiring the recording of deeds, etc. The tenth section of this chapter provides:

"'No deed of trust or mortgage conveying a legal or equitable title to real or personal estate shall be valid against a purchaser for a valuable consideration, without notice thereof, or against creditors, until such deed shall be acknowledged or proved according to law and lodged for record.'

"Again, in section fourteen of same chapter, it enacts, 'deeds made by residents of Kentucky, other than deeds of trust and mortgages, shall not be good against a purchaser for a valuable consideration not having notice thereof, or any creditor, except from the time the same shall be legally lodged for record, unless the same be so lodged within sixty days from the date thereof.'

"It is the settled construction of these sections that a mortgagee or a vendee with an unrecorded mortgage or deed has a better right than an attaching or execution creditor of the mortgagor or vendor, provided such creditor was given notice before he perfected his lien and acquired the legal title."

Righter *vs.* Forrester, 1 Bush, 278.

Low *vs.* Blener, 10 Bush, 331.

Finley *vs.* Spratt, 14 Bush, 225.

"This had been the construction of a similar provision in the Revised Statutes, and was the settled construction when the law authorizing incorporation was first enacted in 1869; and it may be presumed that the Legislature used the word 'valid' in this section with a knowledge of the construction which had been put upon it in construing the law in relation to conveyances." (Record 61.)

The difference between the two statutes above quoted and the statute in regard to the transfer of stock in incorporated companies will be readily perceived. Both of the statutes in relation to conveyances expressly except purchasers and creditors *without notice*. In no case has the full force of the word "valid" been questioned or denied, but in every instance the effort has been to show that the party did or did not come within the exception of a purchaser or creditor *without notice*.

If the purchaser or creditor had notice of a prior equity before he acquired the legal title, then his purchase was subject to that equity; but it has never been questioned that, if the purchaser acquired the legal title without notice of an outstanding

unrecorded deed or mortgage, his title was not affected by it, and the word valid was given its full force and effect. This is well illustrated by the cases referred to in the opinion. Thus, in Righter *vs.* Forrester, 1 Bush, 278, it was decided that the mortgage had priority over the execution purchaser, because the purchaser *had notice* of the mortgage before he purchased.

In Low *vs.* Blinco, 10 Bush, 331, in declaring the law upon this question, it is said:

"3. That *notice* to the purchaser after his purchase does not affect him. He is, by his purchase, invested with an inchoate legal title, which he has the absolute legal right to perfect by procuring a conveyance from the sheriff, and this right does not depend upon his being a stranger to the execution. In such case, the execution creditor is as much entitled to protection as the stranger.

"4. That notice to the creditor, at any time before he may purchase, affects his conscience, and he may be compelled, in obedience to the equity evidenced by the bond or unrecorded deed, to transfer the legal title to the party against whom he ought not, in good conscience, to hold it. * * * * In this case, it appears that the deed to appellee was re-acknowledged and actually put to record more than a month before appellants, who were the execution creditors, purchased at the sheriff's sale. Besides, it is averred in the answer and petition of appellee, to which the record shows the appellants entered their appearance, that appellee gave to them *actual notice* of his deed and of its contents on the day of the sheriff's sale, and before their purchase. This averment is not denied."

In Finley *vs.* Spratt, 14 Bush, 225, it is decided that a mortgage legally lodged for record within sixty days from its date is good against a purchaser for a valuable consideration, or against creditors; if not lodged for record within that time, it is good from the time it is so lodged for record.

All of these cases construe the two statutes above mentioned, and they all turn upon the question of *notice*. So that the cases referred to, instead of qualifying or construing the word valid, in the statute, to mean anything else than what it says, gives that word its full force, and hold that the deed of a bona fide purchaser *without notice* of a prior unrecorded deed or

mortgage is *valid;* but if such purchaser had notice before he perfected his right to the legal title his deed is not valid.

Now, it will be observed that the statute directing how the shares in incorporated companies, organized under that act, shall be transferred, does not contain the exception in favor of purchasers and creditors *without notice* found in the statutes referred to in the opinion in this case, but expressly provides that, "transfers of stock shall not be valid, except as between the parties thereto, until the same are regularly entered upon the books of the company, so as to show the name of the person by whom and to whom the transfer is made, the numbers or other designation of the shares, and the date of the transfers."

The only exception is that a transfer made in any other manner than as therein directed "shall not be valid except as between the parties."

So it may well be presumed, as said in the opinion, that the Legislature used the word valid in this section with a knowledge of the construction which had been put upon it in construing the law in relation to conveyances.

The learned Judge, in his opinion, further says:

"The contract contemplated the issuing of this stock in the name of Wilson, and it is fair to infer from the evidence that this was done with his knowledge and consent. There is no evidence tending to prove that Wilson recognized Crump's right to any of this stock after it was issued."

The contract between Wilson and Crump contemplated a sale for money, and Crump was to have one half of what was received over and above $20,000. But the sale, as finally effected, was for stock in the corporation organized by Wilson and others. The patent belonged to Wilson, and the corporation issued its stock to him in payment therefor. Crump was not one of the incorporators, and had no interest in the patent itself. He had no voice in the issuing of the stock, and was powerless to prevent it being issued to Wilson. But Wilson did recognize Crump's interest in the stock. In his deposition (R. 64) Crump says: "I wrote him once in regard to his selling the stock, and his reply was that he had not sold a dollar of it. The

letter marked 'Exhibit D,' dated Nov. 27, '79, with petition herein, is the letter received on that occasion from Wilson."

So much of that letter as relates to this matter is as follows:

"Here let me say that Mr. Barret, or no other man, has sold a dollar's worth of stock for me, or have I sold any. If Mr. Barret is selling it—his own stock—I can not prevent it; he has the right to do so." (Record 10, 11.)

This is an unqualified admission of Crump's interest in the stock. If not, why would Wilson so earnestly protest that he was not selling and had not sold any of it?

This case has been presented so far only in its legal aspect, and upon the theory that the transaction between Wilson and Thurber was in good faith, but I desire now to call attention briefly to the facts as they appear from the record, and I believe it will be made clear that the testimony wholly fails to sustain Thurber's claim.

The burden of proof is, of course, upon Thurber to make good his claim. He presents the certificates endorsed by Wilson, whose signature is witnessed by S. E. Sandford, and he alleges in his answer that, at the date of the transaction, Wilson delivered the certificates to him in the presence of Sandford, who, at Wilson's request, witnessed the signature and delivery, and that he paid Wilson the then value of the stock. (Record 46.)

He gave his own deposition and took that of Sandford, in support of his claim. In his deposition he testified that he paid Wilson $15,000 cash for the stock. Upon cross-examination he was asked whether by cash he means money or a check; he answered that his transactions with Wilson have all been upon a cash basis, but the payments have mostly been by check. He could not remember whether in this particular instance the payment was by check or not. He was asked to examine his check-book and other books with reference to this payment, which he promised to do, and the deposition was adjourned to the next day to enable him to do so. The next day he reported

he had examined his books but could not locate a check to pay for this stock. (Record 67.)

The deposition was taken on the 18th day of November, 1881, so that only a year had elapsed since the date of this pretended payment. He remembered with great distinctness that the endorsement and delivery of the certificates took place in his office, and that Wilson asked Sandford to witness the signature and delivery; that he paid $15,000 cash to Wilson, but he utterly forgets whether he paid it in money or by check, and although he is a merchant whose books show his daily receipts and payments, neither his check-book, nor his bank-book, nor any other record of his business will enable him to say how he paid this large sum of money, or whether he paid it at all.

His story was so remarkable and improbable that the complainant immediately filed an amended bill, in which he alleged and charged that Thurber had never paid for this stock, and that the pretended transfer was made for the fraudulent purpose of protecting it for Wilson, and that the certificates were held in secret trust for Wilson. (Record 51.)

The learned Circuit Judge says, in his opinion, that the inability of Thurber to say how he paid this $15,000 is "suspicious." We respectfully insist that when taken in connection with the other peculiar circumstances of his claim it is more than suspicious. He knew it would not do for him to say he took this large sum of money from his pocket and paid it, because he knew he would not be believed; and although he says most of his payments to Wilson have been with checks, he was afraid to say this sum was so paid, because he knew no such payment had ever been made, and such an answer would have led to other questions easily exposing the utter falsity and fraud of the whole story.

He did not take the deposition of his friend Wilson to relieve himself of the embarrassment of his equivocal story, but took the deposition of Sandford. Sandford recognized his attestation and Wilson's signature transferring the certificates, but he had no idea as to when they were endorsed or with what object.

Thurber claims that he bought the stock from Wilson on the

26th day of October, 1880, and yet it is admitted by the corporation and himself that he did not notify the Company of his purchase until the 1st of February, 1881, long after the institution of this suit.

It is upon such testimony and in the face of such facts that we are asked to believe Thurber invested $15,000 cash in a comparatively untried industry, in a local enterprise and a new corporation a thousand miles from home.

We respectfully insist that the appellee failed to establish his claim, both in law and in fact.

During all this time Wilson has maintained an unbroken silence; he has not answered, neither has he testified. He could not deny the allegations of the bill, verified as they were by his own letters and telegrams, and the bringing in of his friend Thurber is a mere subterfuge by which he hopes to escape a case amply made out and sustained by evidence he himself has furnished.

Wilson is insolvent; that fact and the fact that Crump knew him to be insolvent appear in this record. It further appears that Crump also knew that by the terms of the public statute under which the corporation was organized, a valid transfer of the stock could only be made upon the books of the Company, and that he relied upon the statute and kept himself informed of Wilson's transfers on the stock-book.

We respectfully ask that the judgment be reversed.

G. C. WHARTON,
Counsel for Appellant.

EMMET FIELD,
of Counsel.

AUTHORITIES CITED.

General Statutes Kentucky, page 548, sec. 11.
Fisher vs. Essex Bank, 5 Gray, 373.
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Shipman vs. Ætna Insurance Co., 29 Conn., 253.
Naglee vs. Pacific Wharf Co., 20 Cal., 529.
Weston vs. Bear River Co., 5 Cal., 189.
Cornick vs. Richards, 3 Lea (Tenn.), 6.
Merchants Nat. Bank vs. Richards, 6 Mo. App., 454.
Digest Laws of New York, vol. 2, page 455, sec. 25.
Johnson vs. Underhill, etc., 52 N. Y., 208.
Application of Thos. Murphy, etc., 51 Wis., 522.
Stebbins vs. Phœnix Insurance Co., 3 Paige, 360.
Pinkerton vs. Railroad, 42 N. H., 453.

We refer to the following additional cases as sustaining the principle contended for:

Brown vs. Adams, 5 Bissell, 181.
Williams vs. Merchants Bank, 5 Blatch., 59.
People's Bank vs. Gridley, 91 Ill., 457.
Blanchard vs. Dedham, 12 Gray, 214.
Bond vs. Rockford, 7 Gray, 407.
Dutton vs. Commercial Bank, 13 Conn., 498.
Oxford vs. Bunnel, 6 Conn., 552.
Sabine vs. Bank of Woodstock, 21 Vt., 355.
Straut vs. Natoma Co., 9 Cal., 79.
Rock vs. Nichols, 3 Allen (Wis.), 342.

115-56

BURGOYNE'S "Quick" Print, 146-150 Centre st., N. Y.

United States Supreme Court.

WILLIAM H. CRUMP,
Appellant,

AGAINST

HORACE K. THURBER,
Respondent.

Statement of Facts.

They are briefly that Wilson, as the owner of the Mege patent, entered into an agreement with plaintiff to "assist him to negotiate for the sale of the right to manufacture oleomargarine and other products of animal fat under what is called the 'Wege Patent'" (a misprint—should be Mege); "said Wilson owned said patent for the States of Indiana and Kentucky, and he desired to sell the right to manufacture under said patent in those States. The terms of the contract entered into were as follows: The said Wilson was to receive $12,000 for the right to manufacture under said patent in the State of Kentucky, and $8,000 for the right to manufacture in the State of Indiana; and all that he might receive for the right to manufacture in either of said States over and above the stated amounts was to be divided equally between us" (original, 98–98, print, 35–36; original, 185, print, 62).

Wilson received stock in the Southern Dairy Company, of Louisville, in his own name, as plaintiff himself puts it, "because he was the owner of the rights for those two States" (original, 103, print, 37; original, 188, print, 63). Impliedly, confessedly, with plaintiff's consent and approval?

In other words, Wilson was *to account to plaintiff* for one-half the profits which should be realized over $20,000.

Wilson, being thus the holder of 250 shares of the capital stock of said company, which had been organized to further the end they had in view, on the 26th of October transferred it for full value to defendant Thurber (print, 66 to 69, original, 196 to 205). This stock was represented by the certificates No. 39 for 100 shares, No. 40 for 100 shares, and No. 53 for 50 shares, in the usual form (print, 44, 45, 62, original, 183; print, 69, original, 206; opinion print, 55). The power of attorney was signed by Wilson in the usual way.

BRIEF.

Respondent has little to add to the views of the trial Judge.

He finds in defendant Thurber's favor the fact, upon competent evidence, that he purchased this stock in good faith without any notice of plaintiff's claim, and paid full value.

If it is true that this finding is based on the testimony of Mr. Thurber alone, it is equally true that plaintiff's case stands upon his evidence alone.

Wilson does not appear in the action, or as a witness on either side.

It is not believed that this Court will review this decision of the trial Judge on this question of fact. Both

plaintiff and defendant Thurber are directly interested in the result, but we do not doubt that both tell the truth.

We call the attention of the Court, upon the questions discussed by the Judge below, to the following additional authorities:

Seatt vs. Pequonnock National Bank, 15 Federal Reporter, 494.
Johnson vs. Laflin, 103 U. S., 800.
Boston Music Hall vs. Corey, 129 Mass., 435.
McNeill vs. The Tenth National Bank, 46 New York Rep., 325.
Leitch vs. Wells, 48 N. Y., 586.
Holbrook vs. N. J. Zinc Co., 57 N. Y., 616.

Cherry v First 21 Am. Law Reg 57 & note

SECOND. It is clear that plaintiff had no ownership in any portion of this stock (opinion, print, 57).

He proceeds on the ground or theory that Wilson is insolvent and a non-resident, and seeks a specific performance—assumes the title of the stock to be in Wilson, the legal title, and asks the Court to aid him in procuring the stock.

Under the cases cited in our State of New York, especially the last case, Thurber's title would be good if he had bought after instead of before plaintiff's suit was brought.

Judge Dwight discusses this ~~suit~~ at length, and his conclusion, at p. 632, is "that the doctrine of *lis pendens*, so far as it maintains that the mere pending of an action concerning the title to stocks is constructive notice to all mankind, and that a purchaser acting in good faith is bound by the results of the action, is no part of the law of this State.

The judgment and decree below should be affirmed.

E. MORE,
Att'y for Respondent.